VOL. III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 131

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

No. 132

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 5, 1941
CERTIORARI GRANTED OCTOBER 13, 1941

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CONO BUGLIO, residing at Wheat Road, Vineland, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Buglio, you are the brother of Joseph Buglio? A. Yes, sir.

Q. Are you employed by his company? A. I am employed and have stocks in the business.

Q. Do you drive a truck? A. Yes, sir.

Q. For the Buglio Trucking Company? A. Yes, sir.

Q. How long have you driven a truck for that company? 3902
A. At least 20 years.

Q. In the last four years have you been driving into New York City? A. Yes, sir.

Q. Are you a member of any labor union? A. Yes.

Q. What union? A. 807.

Q. You are a member of Local 807? A. No; I am 590.

Q. When did you join 590? A. May—some time in May, 1934.

Q. Is that located at Vineland? A. Yes, sir.

Q. What International is that associated with? A. American Federal International.

Q. American Federation of Labor? A. Yes.

Q. Is that the Teamsters Union? A. Yes, sir.

Mr. Maguire: May I object to counsel's leading? 3903

The Court: Yes. I think you might have the witness testify. That is the purpose he was brought here for.

Q. Now, before the beginning of 1937 did you unload your own trucks in New York City? A. Yes, sir.

Q. Did you haul any type of commodity more than others? A. We always had the same thing practically all the time.

Q. What was that? A. Canned stuff.

Q. And did you bring it to one place as a rule? A. Most of it.

Q. Where? A. Down to Leggett's; Francis H. Leggett's.

Q. Where is that? A. 27th and West Street.

The Court: Manhattan?

The Witness: No, New York.

The Court: Well, is that New York or Brooklyn?

The Witness: New York is what they have on the bill of lading.

The Court: Well, you have been there; you know
3905 where it is. Is it along the Hudson River?

The Witness: Right along the river front.

The Court: The Hudson River?

The Witness: Yes.

The Court: Or do you call it the North River?

The Witness: Well, they say 13th and West; that is all I can tell you.

Q. Now, as a rule, Mr. Buglio, does all your truckload of merchandise go to Leggett's, or do you have several stops on one truck? A. Well, sometimes we had straight loads; sometimes we have mixed loads.

Q. What did you have mostly? A. Mostly straight loads.

Q. How long does it take to unload a straight load at
3906 Leggett's? A. About an hour, an hour and a half at the most.

Q. Did you have any helper with you before the early part of 1937? A. Yes, sir.

Q. About what time did you use to leave Vineland to drive into New York City? A. Around 2.30 in the morning.

Q. About what time did you use to arrive back in Vineland after a round trip? A. About 1.30, 2.30 in the afternoon, because we didn't go right straight; we used to stop.

Q. Where did you stop? A. Down at the lunch wagon or down at the gasoline station.

Q. How long did you stop? A. Sometimes we stayed there an hour; sometimes we wouldn't stay any time at all, because we would get right back home.

Q. Do you remember when for the first time you didn't do any of the unloading yourself? A. Well, we didn't do it after——

The Court: What counsel asked you was if you remember the time, the first time when you had any body help you to do any unloading other than your own helpers.

The Witness: 1937. 3908

Q. What part of the year? A. About March or the latter part of February; some time like that.

Q. Was there any one man that began to work on your truck at that time? A. Well, we had one man for two or three trucks. When he couldn't do it, we had more than one man.

Q. Who is the man that you had? A. Our regular man was Jimmie Martin.

The Court: Well, was he the first man that you had?

The Witness: The first man. He was supposed to be the first man on the job. 3909

Q. How many trucks did Martin work on as a rule? A. Well, he unloaded two or three if they are all straight loads; sometimes he unloads four.

Q. What does he usually do? A. That is all he does.

Q. Well, how many trucks does he usually unload? What was his average? A. Well, two or three at the most.

Q. Do you remember one occasion when you had a load at Leggett's in 1937? A. Yes.

Q. Was Martin there when you arrived? A. No, he wasn't.

Q. What time did you arrive at Leggett's? A. When I arrived there it was about a quarter to eight in the morning.

Q. Do you remember whether this was the first truck of your company there that morning? A. It was.

Q. Were there any others there that morning? A. Yes.

Q. After you? A. Yes. Two of them.

Q. Now, did you see anybody when you pulled in?

Mr. Murray: Your Honor, may we have the time more definitely fixed?

3911

The Court: If he can fix the time.

Q. What part of 1937 was that, do you remember? A. I don't remember the exact date.

The Court: Well, how long was it after Jimmie Martin began to work for you?

The Witness: Well, it wasn't very long after that.

The Court: A matter of weeks or more?

The Witness: Oh, a couple of months I imagine.

Q. Did you see anybody at the platform when you pulled in? A. No, sir.

Q. Did you start unloading when you pulled in there?

3912

A. Well, that morning I had a load that had to be transferred to a carload for Leggett's, and they wanted the truck in and Dillon didn't show up. So the checker told me I had to back in to take that stuff off and put it in a cart because it had to be shipped to Detroit. So I backed in and had part of the load off when Jimmie Martin came along, and I asked him where he was. So he said he had trouble. So he got kind of sore and he said, "You have no right to unload." I said, "Well, Leggett wanted the stuff and I had to take it off." So he got kind of sore and he made a pass

at me, and I ducked him. So I got kind of sore and I picked him up by the collar and threw him out of the truck. So he goes out and gets three or four other fellows and came back there and wanted to know what was the matter; and I told them—I said, "I asked him where he was and he got sore, and he made a pass at me. So I threw him out." So he goes out and gets one of the delegates.

Q. Whom did he get? A. I don't know. Austy, they call him.

Q. Austy? A. Yes. So he came out there and said, "Who's the driver of this truck?" I said, "I am the driver. What is the matter?" He said, "I am a delegate from 807." He said, "I want Jimmie Martin on that truck." I said, 3914
"He is supposed to be on here and he ain't on here; and he got hot and made a pass at me and I threw him out, and he came to get you." So he got kind of sore. So he said, "We are the bosses of these trucks."

Q. Who said that? A. Austy. He said, "We are the bosses of these trucks." I said, "Did you buy the trucks?" He said, "We didn't buy them, but we run them in New York City." So he got kind of snotty about it and he said, "I will take a smack at you." I said, "Go ahead." I said, "I will have you locked up for hitting me." So then Jimmie Martin jumped in and said, "Leave him alone, because," he said, "he gets hot right away and wants to fight." So Jimmie Martin cooled off and we unloaded the truck and the other four men went away with Austy.

3915

The Court: Well, we will recess until five minutes after two.

(Recess to 2.05 P. M.)

AFTERNOON SESSION 2.05 P. M.

(The roll of the defendants was called and all were present.)

CONO BUGLIO resumed the stand and further testified as follows:

Direct examination continued by Mr. Marks.

Q. Mr. Buglio, what time did Jimmie Martin arrive at the warehouse that day? A. About 9.30.

Q. What time did you say your truck had arrived? A.
3917 About a quarter to eight.

Q. What time does the warehouse open? A. 8 o'clock.

Q. Did the three or four or five men who arrived before Furey say anything to you before he arrived? A. Well, they told me not to unload.

Mr. Maguire: I object to that.

The Court: Overruled.

Mr. Maguire: Exception.

A. (Continued) That they——

The Court: The answer is yes or no. Did they say anything to you?

The Witness: Yes.

3918 The Court: What did they say?

Mr. Maguire: Objection.

The Court: Overruled.

Mr. Maguire: Exception.

The Witness: They said if I go ahead and unload they will collect a day's pay and I will have to pay them and pay Jimmie Martin besides. So then I stopped unloading until Jimmie Martin came back.

Q. Did they say anything else before Furey arrived? A. No.

Q. Have you told us the entire conversation that you can remember during that episode? A. I did.

Q. Now were you unloading at Francis H. Leggett's about three or four weeks ago? A. Yes, sir.

Q. Who was present on that occasion?

Mr. Maguire: Objected to.

The Court: He may state, if he knows.

A. Why, Jimmie Martin and one of our drivers was there present.

Q. Who else? A. Then a fellow by the name of Red sitting on the truck. 3920

Q. Do you know Red's last name? A. (After hesitation) I can't think of his last name.

Q. Will you stand up and tell us if you see him in the court here? A. Right there (indicating).

Q. Where? A. Right there on the end of that table (indicating).

(Man stands.)

Q. Is that the man? A. Yes.

Mr. Maguire: Can the name of the man identified be placed on the record?

The Court: Yes.

Mr. Duff: My name is John J. Duff. 3921

Mr. Maguire: One of the lawyers in this case; one of the attorneys for the defendants in this case.

Mr. Marks: May I have this marked for identification, your Honor?

The Court: Yes.

(Marked Government's Exhibit 45 for Identification.)

Q. I show you Government's Exhibit 45 for Identification. Will you look at that? A. (Witness examines photograph.)

Q. Now, will you look at Mr. Duff, the man whom you just pointed out a moment ago. A. The only fellow I know by the name of Red is sitting right there (indicating). I don't see anybody else; but I know him for the last two years.

The Court: Well, do you know the person whose photograph was just shown you?

The Witness: Yes.

The Court: Is that the gentleman whom you just
3923 identified a moment ago?

The Witness: It looks just like him to me.

Q. Well, will you look around the court room again, Mr. Buglio? Take your time. A. I can't see him.

Q. Will you step down from the stand and walk closer over there and look around? Take your time now. A. (Stepping down from stand) That is the fellow that I know by the name of Red (indicating).

The Court: Which one?

The Witness: That fellow there (indicating).

Mr. Murray: May I look at the photograph, if your Honor please?

The Court: Yes.

3924

Mr. Marks: I have no objection.

The Court: Show it to Mr. Murray.

(Photograph handed to Mr. Murray.)

Mr. Murray: May I offer it in evidence?

Mr. Marks: I have no objection.

The Court: Have you any objection, Mr. Maguire?

Mr. Maguire: I have none.

The Court: Mr. Duff, have you any objection?

Mr. Duff: No.

The Court: Mr. Aronstein, have you any objection?

Mr. Aronstein: No,

The Court: Proceed.

Do the defendants want it marked as a Defendants' Exhibit?

Mr. Murray: It doesn't make any difference, your Honor. It may be marked ours without any objection.

The Court: I think it had bettter be marked Exhibit R in evidence.

3926

(Government's Exhibit 45 for Identification received in evidence and marked Defendants' Exhibit R.)

Mr. Marks: May I show it to the jury, your Honor?

The Court: Yes.

Mr. Marks: May I read them the name on the back?

The Court: No, no. The photograph was offered in evidence.

Mr. Marks: Just the one side?

The Court: Yes.

Mr. Marks: And may I show that side to the jury?

3927

The Court: One moment. Let me look at it. Let me see what is on the back of it.

(Handed to Court.)

The Court: Well, I want something pasted over the back, the back covered.

Mr. Marks: If your Honor please, may I request one of the defendants to stand up?

The Court: Not yet. Let us get this matter settled first.

Mr. Marks: Well, it is in connection with this matter.

The Court: I understand that.

Q. Did you know this man Red by any other name? A. The only name I know, I seen he had a driving license by that name, that is all I know.

Q. What name? A. Harry——

Q. Will you take your hand away from your mouth, Mr. Buglio, so we can hear you? Harry? A. I just can't think of his last name, but I have seen his picture on his license; that is the only fellow I can see in here looks like him.

3929 Q. Well, can you remember the last name? Try to think of it? A. Harry Zohner, something like that.

Q. What was that? A. Zohner.

Q. How would you spell it? A. I don't know.

Q. Do you remember the first letter of the last name?

The Court: Wait a minute. Let us see how the stenographer would spell it.

The Stenographer: Z-o-h-n-e-r, your Honor, from his pronunciation.

Q. That is what you said, something like Zohner? A. Well, I don't just exactly know how to pronounce it, but——

The Court: Well, the question was whether it
3930 was something like that.

A. No.

Q. What is the best approximation you can make of the last name? A. I can't just pronounce it. I know what it is but I just can't pronounce it.

Q. Can you spell it? A. No, I don't know.

Q. Had you seen that man at Francis H. Leggett before? A. Yes; he always hung around there.

Q. For how long a time had you seen him there? A. A couple of years.

Q. What was that? A. A couple of years.

Q. How often have you seen him there? A. Oh, maybe once—once or twice a week.

Q. Now, can you remember what his last name is?

Mr. Marks: May I now ask one of the defendants to rise, your Honor?

Mr. Maguire: May I object to that, if the Court please?

The Court: Well, I will permit a roll call of all of the defendants, have them all rise separately as the name of each one is called. 3932

Where is the photograph? Has it been shown to the jury?

Mr. Marks: Yes. I believe all the members of the jury have seen it.

The Court: We will call the roll. I will sustain the objection of counsel to your calling the name of any particular person.

Mr. Marks: May I ask the witness to stand up and look at each man as he rises?

The Court: Yes; he can look at them.

Q. Mr. Buglio, will you stand up now and as the clerk calls each name will you look at the man as he rises, and if the man whom you know as [redacted]—— 3933

The Court: Wait a minute. You let the roll be called; let him look at each man as he stands up as his name is called; and after the roll call has been finished, let him state if there is any man who stood up whom he recognizes.

Q. Do you understand that? A. Yes.

(The clerk called the roll, and as each name was called a man stood up.)

Q. Now, has the man whom you know as Red risen in this court room? A. Yes.

Q. Do you see him? A. Yes.

Q. Which one was he? A. Right down the second row with the lumber jacket on.

Q. Beg pardon? A. With the lumber jacket on.

Q. Which chair in the second row, beginning the count from your left? A. Eighth—or seventh.

Q. Seventh man in the second row from the left? A. Yes.

3935 Mr. Marks: May the clerk now call the name of——

The Court: Well, which man is it from the right?

The Witness: The same thing, seventh man.

Mr. Marks: May the clerk call the name of Harry Zollinger?

The Court: Yes.

The Clerk: Harry Zollinger.

(A man stood.)

Q. Is that the man? A. Yes.

Q. Now, will you look at Mr. Duff again, Mr. Buglio, and tell us now which man it is. A. I think that is that one now in the second row.

3936 Q. And not Mr. Duff? A. I had not seen him before.

Q. Now, on this occasion three or four weeks ago at Francis H. Leggett's whom did you see there? A. I was walking out of the warehouse——

The Court: No. Can you say whom you saw there? The question was whom you saw, not where you were walking.

The Witness: All right. Harry.

Q. That is the man you just pointed out as Red? A. Yes.

Q. Did you have any conversation with him there? A. I was walking across the street and he called me——

The Court: Yes or no.

The Witness: Yes.

Q. What was the conversation?

Mr. Maguire: Objected to.

Mr. Marks: If your Honor wishes, I can approach the bench and make an offer of proof.

The Court: I will sustain the objection. 3938

Mr. Marks: May I make an offer of proof, your Honor, at the bench?

The Court: Well, go on with your examination.

Mr. Marks: Well, that is all I have except for this one conversation.

The Court: All right, you may come up here then.

Defendants' counsel and the stenographer likewise.

(The following discussion took place at the bench in the presence of all counsel, out of the hearing of the jury.)

Mr. Marks: I expect that this witness will testify to the following conversation in substance: That is, that the defendant Zellinger said it would be too bad for anybody to testify against Local 807 in the case here. 3939

The Court: How long ago was this conversation?

Mr. Marks: About three or four weeks.

The Court: No, that is another crime.

Mr. Cahill: Isn't it an admission against the defendant Zellinger, your Honor?

The Court: Well, it would be except that it is proposed to show by this witness that what he said was not with respect to himself but was with respect to himself but was with respect to all of the other defendants here. Mr. Marks says what he proposes to show is that he said if anybody testified against 807—that means the union itself, and all the defendants who have been indicted.

Mr. Marks: Which included Zellinger himself.

The Court: Now, I am not going to permit it. In the exercise of my discretion I am not going to do it. I am not going to let you ruin your case
3941 by just one thing of that character that might be regarded on appeal as so prejudicial that the case would be reversed. I won't do it.

(The following occurred within the hearing of the jury at the conclusion of the conference at the bench):

Mr. Marks: I have no further questions.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Is it true that Martin unloaded as many as four of your trucks a day? A. When we first started, yes.

Q. And did he also load trucks? A. Once a week he also loaded.

3942 Q. Well, were there times when you had return loads as many as three or four times a week? A. Yes, he loaded them in these 8 hours, and when he worked overtime he got paid time and a half.

Q. I am asking you whether there were times when you had three or four reloads on your trucks a week? A. That was very seldom we had four loads.

Q. Well, did you reload olives from the Bronx? A. Yes, once in a while.

Q. What was the name of that concern? A. Mawer-Gulden-Annis.

Q. Did Martin go to the Bronx with you and help you load? A. Yes, sir.

Q. These were olives that were reloaded, weren't they? A. Yes, sir.

Q. The barrels weighed between five and six hundred pounds, didn't they? A. Yes.

Q. And the casks, how many pounds did they weigh? A. 1700.

Q. Did Martin also reload sugar in Brooklyn that you carted back to New Jersey? A. Once in a while.

Q. Where was the sugar loaded? A. That was loaded 3944
at the Army Base.

Q. Now, when you loaded loads by the barrel how many tons did you load? A. 10 or 12 tons.

Q. Did you sometimes have 15 tons? A. Once in a great while.

Q. How many tons of sugar did you reload? A. 12 or 15 tons.

Q. Was there anything else that you reloaded and carried back to Jersey after you made that delivery of the Jersey merchandise in New York? A. Once in a while we used to pick up at a pier.

Q. What pier did you pick stuff up at? A. It is according to wherever the boat is supposed to come in. 61 and 84, all along the front.

Q. Did you carry back to New Jersey on occasions cases 3945
of canned goods? A. Yes, sir.

Q. What were the canned goods? A. Pineapple juice, orange juice; stuff like that.

Q. Do you know how much those cases weighed on an average? A. Well, they weighed anywhere from 38 to 42 pounds.

Q. Did you cart anything back besides the merchandise you have spoken of? A. No.

Q. How about rat poison? A. We only got a load of that.

Q. Where did you get that rat poison? A. Some place in Brooklyn.

Q. How often did you return with loads of rat poison to Jersey? A. We never had a full load of that.

Q. Well, how did you carry the rat poison? In bags? A. It was in bags.

Q. Weighing how much? Each bag? A. 50 pounds.

Q. Do you know on an average how many bags of rat poison you carried back to Jersey when you did truck it? A. About 50 bags.

3947 Q. How frequently did you go to the Bronx to carry back a load of olives to Jersey? A. That is in Brooklyn. I beg your pardon.

Q. Brooklyn, was it? A. Yes.

Q. Well, have you carted anything from the Bronx back to New Jersey? A. Not from the Bronx.

Q. You never were to the Bronx? A. We go there, but we always bring stuff there; not to bring it back.

Q. No returns? A. No returns.

Q. This incident when you say Martin arrived late for the unloading of your truck at Leggett's: Did Martin strike you? A. No, he didn't.

Q. You struck him, didn't you? A. I didn't strike him neither.

Q. What did you do to him? A. I just picked him up
3948 and threw him off the truck.

Q. Onto a pavement? A. No. On a platform.

Q. The platform didn't have any cushion on it when Martin landed, did it? A. Martin didn't land; he landed on his feet.

Q. After Martin landed on his feet did Martin do anything further about it? A. He went out and got a fellow by the name of Austy, and he came back with him, and they were all ready—they had three or four fellows waiting. So, he wasn't hurt or nothing.

Q. No blows were struck? A. No.

Q. Some words passed between you? A. Just words, that is all.

Q. Words? A. Between me and Martin.

Q. No one was hurt? A. No.

Q. Then Martin said, did he, "Well, he has a quick temper; it will pass over," or something like that? A. Yes.

Q. And it did pass over? A. Yes.

Q. Was that the only time there had been any argument between you and Martin? A. No. We had arguments all the time, me and Martin.

Q. You enjoyed it? A. I think it is a pastime. 3950

Q. In spite of the arguments you are still friendly? A. Yes, sir. After the argument we go in the lunch wagon and eat together.

Q. Would you say Martin and you are good friends now? A. Yes, sir.

Q. No hard feeling? A. I don't think we have.

Q. Good worker, is he? A. Yes.

Q. Does his share of the work? A. He does his share.

Mr. Murray: That is all.

The Court: Any redirect?

Mr. Marks: No, your Honor.

The Court: Next witness.

(Witness excused.)

3951

RAYMOND E. STILES, residing at 357 East Broadway, Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mr. Stiles? A. Motor freight operator.

Q. What is your company? A. What is that?

Q. What is the name of your company? A. R. E. Stiles Motor Freight.

Q. What is your position in that company? A. Owner and operator.

Q. Were you engaged in that business in 1937? A. I was.

Q. Between what points did you haul merchandise? A. Between Salem, New Jersey, and New York.

Q. How many trucks did you have in the beginning of 1937? A. Seven.

Q. About how many truckloads a week did you send in
3953 to New York City? A. Two or three; maybe four loads some weeks.

Q. Did you at that time operate a motor truck yourself? A. I did.

Q. Are you a member of a union? A. Yes, sir.

Q. What union? A. Local 590 of Vineland, New Jersey.

Q. What commodities did you transport in 1937? A. Fruit products for the H. J. Heinz Company.

Q. Was H. J. Heinz your largest consignee? A. They were.

Q. What proportion of your shipments into New York did you take to H. J. Heinz? A. About 90 per cent.

Q. Where in New York City did you take those shipments? A. To Brook Avenue in the Bronx, and Borden Avenue in Long Island City.

3954 Q. Those two places? A. Those two places.

Q. When you drove in yourself in the beginning of 1937 did you unload your Heinz merchandise yourself? A. I did.

Q. Will you xplain how you did it personally? A. Well, the warehouse generally opens at 7.30 in the morning, and after their trucks drive out—they have their own delivery trucks for store business—after they drive out, why, we back our truck in the platform, which is right

level with the tail-gate of your truck, and they have 4-wheel hand trucks that hold about 50 or 75, maybe 100 packages, according to the size packages you have on.

Q. What size would the packages be that you would have for Heinz? A. Well, the largest runs about a foot square, and holds about a dozen bottles.

Q. How were they packed? A. Pasteboard cartons.

Q. Pasteboard cartons? A. Yes.

Q. How would you unload it? A. Well, you would just back the carts up to your truck. As you gradually unload these trucks ran inside of your truck. You always have the trucks close to your commodity to handle it all the time. They always give you help.

3956

Q. They always give you help? A. Yes; they would give you all the help you want.

Q. On the occasions when you yourself unloaded your truck how long would it take you? A. I could unload a trailer load of about 10 to 12 tons in an hour or three-quarters; three-quarters to an hour; not any longer than that.

Q. How many truckloads a day would you have in the City? A. Why, on an average we generally ran two trucks; once in a while three; but the majority of times two loads came in together.

Q. Did you make a visit to New York at any time in 1937 with respect to unloading your merchandise? A. Yes. I don't know the particular date.

Q. Do you know what time of the year it was? A. It 3957
was the summer of 1937.

Q. Where did you go? A. Why, I went down on the corner of 24th and Eleventh Avenue. There was a diner there on the corner, to meet a fellow.

Q. You went into that diner. A. I went into that diner.

Q. Whom did you see there? A. Well, there were three or four fellows in the back. I don't know just who they were.

Q. Do you know the name of any one of those persons? A. Well, the only name——

By the Court.

Q. Did you ever see any of those persons before that time? A. No, sir.

Q. Have you ever seen any of them since that time? A. Oh yes, I have seen them since.

Q. Did you come to know them? A. No. I never had any personal dealings with them.

Q. Never knew any of their names? A. Only nicknames.

3959 *By Mr. Ennis.*

Q. What was that name? A. Red; that is all I knew.

Q. Will you stand and look around this court room and tell the jury if you see that person here. A. Yes. This fellow there (indicating).

The Court: Which row?

The Witness: Front row.

The Court: How many seats from the end on your right hand side?

The Witness: Well, he is the man sitting in the first chair. There is an empty chair this side of him (indicating).

Mr. Ennis: May the clerk call the name of Abraham Klenofsky?

3960 The Court: Yes.

The Clerk: Abraham Klenofsky.

(A man stood up.)

Q. Is that the man you knew as Red? A. That is the man.

Q. When you walked into the diner in the summer of 1937 did you see that man? A. I did.

Q. Were there other men with him? A. There were two or three standing there.

Q. Did you have any conversation with him? A. Yes, some.

Q. What was said? A. Why, he walked up to me and asked me who I was looking for. I told him I guess it was him, from the description my driver gave me.

Q. What did he say? A. He wanted to know if I was the boss.

Q. What did you say as to that? A. I asked him what he meant by boss, and he said a truck owner. I said, "Yes." So he wanted to know who I was and where I was from, and I told him. And he said, "Well, come on over. 3962
I will take you to the union office and let you sign a contract."

Q. Was there anything else said there in the diner? A. No. We came on out on the street.

Q. How many of you? A. Three. Two other fellows besides Red and myself.

Q. Who were the other fellows with? A. Who were the other fellows with?

Q. Yes. A. Why, they were with Red.

Q. Do you know the names of those persons? A. I don't know how to pronounce the name; Pine or Peen.

Q. Pine or Peen? A. Yes.

Q. Do you know how to spell it? A. I thought it was Pyne, P-y-n-e.

Q. And the other one? A. The other one was, Kingon. 3963

Q. What is it? A. Kingon.

Q. Do you know how to spell that? A. Well, he had on the paper K-i-n-g-o-n.

Q. When you came out on the street did you have any further conversation with them there? A. Yes. I asked them if it couldn't be handled without signing a contract, couldn't I deal personally with one man. They told me no, I would have to go personally to the office.

Q. Who told you? A. Red.

Q. What did you do then? A. I got in the car and drove up to the office, Varick Street.

Q. Where was the office? A. At Varick Street.

Q. You went into the office? A. Yes.

Q. Were you introduced to——

The Court: Well, who went with you?

The Witness: Why, Red and this Pyne, and Kingon.

Q. Did you meet any other persons there? A. At the office?

3965 Q. Yes. A. Well, there were three or four men sitting in the office, but I didn't meet any of them. That is, I didn't have anything to do with them.

Q. Was anything said in your presence and in their presence by Red or these other two men? A. Yes. When I went in they just said, "Here is the boss."

Q. Who said that? A. Red said, "Here is a boss ready to sign a contract."

Q. Who spoke next? A. Why, the gentleman that wrote the contract.

Q. Do you know his name? A. Well, the only way I knew it was when he signed this contract. He signed it Flaherty, I think his name was.

Q. Flaherty? A. Flaherty, or something like that.

3966 Q. You said there were other persons there? A. Oh yes, there was men there.

Q. Do you know the names of any of those persons? A. I didn't at that time.

Q. Have you met any of those persons since? A. Not personally.

The Court: Have you seen them?

The Witness: Yes, I have seen them.

The Court: Where?
The Witness: On the street.
The Court: With whom if anyone that you knew?
The Witness: It wasn't with anyone that I knew. It happened to be union men——
The Court: Well, that answers my question.

Q. Did Red or Flaherty in your presence call these other persons by name? A. One did.
Q. Who called what name? A. Called Campbell.

The Court: Who called him by name?
The Witness: Red.

3968

Q. Called one of the men there Campbell? A. Yes.
Q. Will you stand and look around the court room and tell the jury if you see either Campbell or Flaherty? A. (Standing).

The Court: You can step down if you wish.
The Witness: I think I see the gentleman.
The Court: Which row?
The Witness: Second row.
The Court: And how far from the end?
The Witness: The ninth man.
The Court: From this end?
The Witness: Yes.
Mr. Ennis: May the clerk call the name of William Campbell? 3969
The Clerk: William Campbell.
(A man stood.)

Q. Is that the man you saw there that day? A. That is the man.
Q. Do you see Flaherty here? A. I don't recognize him.
Q. You do not see him here? A. No.

Q. Do you recall anything that Campbell said at that conversation? A. No, I don't.

Q. Do you recall anything that was said at that conversation by anyone present other than what you have said so far? A. No, sir.

Q. Was there any discussion about a contract? A. Yes.

Q. What was said? A. Well, I asked—I told them that I wouldn't have the business any longer if I signed a contract, and they said that I would, that they could handle the business satisfactorily because they had union men hauling their commodities.

Q. Whose commodities? A. Heinz.

3971 Q. Did you say anything else to them about your not having the business if they handled it? A. I told them I wouldn't have the business any longer if they were going to handle it; that is all there was to it. They said, "You will have to sign. That is the only way you will get your trucks unloaded."

Q. What did you say to that? A. Well, I just said, "I will have to sign the same as the rest then."

Q. What did you say? I said, "I will have to sign the same as the rest are doing."

Q. Did you have any discussion about any other hauling except the Heinz hauling? A. Yes.

Q. What was said about that? A. I asked them if I gave them empty glass bottles and flat covered commodities to handle would they let me handle the food products

3972 myself.

Q. What did they say to that? A. They said they couldn't do it, they would have to handle it all.

Q. Did you sign a form of contract at that time? A. I did.

Mr. Ennis: I request this paper to be marked as a Government exhibit for identification.

The Court: All right.

(Marked Government's Exhibit 46 for Identification.)

Q. I show you Government's Exhibit 46 for Identification. Do you recognize your signature on that? A. I do.

Q. Is that the paper you signed on that occasion? A. That is it.

Q. Did you see anyone else sign it at that time? A. John Flaherty, if that is his name there.

Q. Signed that? A. Yes.

Q. In your presence? A. Yes.

Q. Did you see anything else written on it at that time? A. The men's names were wrote on the back that I was to use to unload my trucks. 3974

Q. Who wrote those names on the back? A. The man who made out the contract, Flaherty.

Q. Wrote those names on the back? A. Wrote those names on the back.

Q. At that time was there any conversation about what particular men would work on your trucks? A. Well, they wanted to know how many men I would need, and I told them approximately how many trucks I would have in a week or a day. So they said, "As requested, use these two men, either one or the other at different times." I guess it meant to split the work up; I don't know what else it meant.

Q. Who said that? A. The fellow who drew the contract, Flaherty. 3975

Q. Was anything said about using other men? A. About using other men?

Q. Yes, about using other 807 men? A. No.

Q. Do you recall anything else that was said in that conversation? A. No, not that I can think of.

Q. Did you have any conversation about your being a union member?

Mr. Murray: I object, your Honor, on the ground that it is leading and suggestive.

The Court: He may answer yes or no.

A. No.

Q. You did not? A. No.

Mr. Ennis: May I read the pertinent parts of this, your Honor?

Mr. Murray: It has not been offered as yet.

Mr. Ennis: I am sorry. I offer it in evidence.

The Court: Just a moment. Let us see if counsel objects. They have a right to look at it.

3977

(Paper handed to Mr. Murray.)

Mr. Ennis: No objection?

Mr. Murray: No.

The Court: What is the date of the paper?

Mr. Ennis: June 9, 1937.

(Government's Exhibit 46 for Identification received in evidence.)

Mr. Ennis (addressing the jury): This paper, dated June 9, 1937, purports to be an agreement between R. E. Stiles Motor Freight Company and Local 807. Signed for the firm of R. E. Stiles Motor Freight, by Raymond E. Stiles; and for Local 807 by John Flaherty. And on the reverse side are

3978 the names David Pine and Harry Kenyon.

By Mr. Ennis.

Q. After you signed this paper, Mr. Stiles, did your company continue to haul freight for the Hines Company? A. No, not for a period of three or four weeks.

Q. You did not? A. Did not.

Q. Do you recall any occasion after this visit to New York, another visit upon which you discussed the unload-

ing of your merchandise in New York City? A. I did not make any visit to New York. I wrote to a man named Amen that I had——.

The Court: No, don't tell us what you wrote.

Q. Did you thereafter drive trucks yourself to New York to unload? A. Yes, I did.

Q. Do you recall an occasion in September in 1938 when you drove a truck into New York to be unloaded? A. No.

Q. Do you recall any occasion when you yourself were present in New York upon which your truck was to pick up a load in Jersey? A. I drove a truck in Jersey City to 3980
be unloaded. My New York truck was to pick up the union man in New York City to unload the both of them.

Q. You were in Jersey City on the truck? A. Yes.

Q. And your New York man was on another truck in New York City? A. That is it.

Q. And did he use a Local 807 man? A. He did.

Q. On his New York delivery? A. Yes, sir.

Q. And did he come over to Jersey City with the local 807 man? A. He did.

Q. Will you tell us the time of that occasion? A. Well, it was in the fall of 1938. I stayed in Jersey City with a truckload and the other driver came to New York.

Q. What month?

3981

Mr. Murray: I object to any further conversation.

Mr. Ennis: I just want to fix the time. I won't go into the conversation, your Honor.

Q. Can you tell me the month?

The Court: He did.

Mr. Ennis: If the Court please, may I make an offer of proof with respect to that occasion?

3982 *Albert E. Wilson—For Government—Direct.*

The Court: Not at this time.

Mr. Ennis: I have no further questions with respect to the indictment.

The Court: Cross-examine.

Mr. Murray: No questions.

The Court: Witness excused.

(Witness excused.)

Mr. Ennis: I will call Mr. Wilson.

ALBERT A. WILSON, residing at 439 Elm Street, Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

3983

Direct examination by Mr. Ennis.

Q. What is your occupation? A. Truck driver.

Q. By whom are you employed? A. Ruhl Transportation.

Q. Where is that company located? A. Salem, New Jersey.

Q. Were you employed by that company at the beginning of 1937? A. I was, sir.

Q. Did you haul merchandise into New York City for that company at that time? A. I did, sir.

Q. What kind of merchandise? A. There was floor

3984 covering.

Q. Did you haul floor covering exclusively? A. Yes, sir.

Q. Did you unload the merchandise you hauled into New York City yourself at that time? A. I did until these 807 men, these 807 guys started stopping me——

Mr. Murray: I move to strike it out.

The Court: Strike it out; after "I did."

Q. Do you recall the first occasion upon which you had any conversation with persons in New York City about other people unloading your truck? A. I do, sir.

Q. Where was this? A. One morning as I was coming off the Williamsburgh Bridge there was a car pulling up alongside of me——

Mr. Murray: If your Honor please, I move to strike out the answer as far as it has gone. It is not responsive.

The Court: No.

Mr. Ennis: If the Court please, the question was where was it.

The Court: Proceed. I have denied the motion. 3986

Q. When was this?

The Court: Let him finish. He says he was coming off the Williamsburgh Bridge.

A. (Continued) I was coming off the Williamsburgh Bridge one morning and a car came up alongside of me on Broadway and rode me over to the curb and a bad-eye guy got out of it——

The Court: One moment. Strike that out.

Q. When was this, Mr. Wilson? A. This was in the summer of 1937. 3987

Q. Was this Broadway in Brooklyn? A. Yes, sir.

Q. And after this car rode you over to the curb, what happened? A. Well, this here bad-eye fellow got out and told me I need a City man. So I told him I didn't need a City man. So he said, "Yes, you do."

By the Court.

Q. Do you know this man? A. Yes, I would know him.

By Mr. Ennis.

Q. Do you know his name? A. No.

By the Court.

Q. Did you ever ascertain what his name was? A. No, I didn't ask him what his name was.

Q. Well, had you ever seen him before that? A. No, I
3989 didn't.

Q. Have you ever seen him since then? A. I have, sir.

Q. Where? A. I would say a couple of times, different places.

The Court: Look around the court room and see if you find him here now.

By Mr. Ennis.

Q. You may step down and walk around, if you wish, Mr. Wilson. A. (Leaving stand) Is that him slouched down in the seat there (indicating)?

The Court: Well, you can step down if you want
3990 to if you can't see him from there. Walk over closer.

The Witness (approaching defendants): There he sits (indicating). First seat, second aisle.

Q. First seat, second row? A. Yes.

Mr. Ennis: Will the clerk call the name of Austin Furey.

The Clerk: Austin Furey.

(A man stood up.)

Q. Is that the man that spoke to you? A. Yes.

Q. Will you take your seat again? A. Yes (returning to stand).

Q. Was there anyone with him on that occasion? A. There was another fellow in the car was driving him, but I could not recognize him if I saw him.

Q. Did he get out of the car? A. No, he didn't. He remained in the car.

Q. Well, did you see him in the car? A. Yes, I saw him in the car.

3992

Q. Well, will you look around the court room and see if you see that person?

The Court: He says he would not know him.

Mr. Ennis: Well, if the Court pleases, if he looks at a group of people it is quite possible that he might.

The Court: Anything in this world is possible, but it is a question of whether it is probable.

The Witness: I would not say that I am really definite in knowing him.

Q. What was the conversation between you and Furey on that occasion? A. Furey told me—if that is his name—he told me that I needed a City man, and he asked me where was I going. I told him to Siegel Floor Covering at 922 Broadway, and he told me to wait up there; he is going to send a man up there. So I didn't wait and went and unloaded and beat it out the city.

3993

Q. When did you next speak to anyone in New York City about unloading your truck? A. Well, the next person I spoke to was Freddy Jordan and Needelmann.

Q. When was that? A. That was in the fall.

Q. Of what year? A. Of 1937.

Q. Where was that? A. In Brooklyn also.

Q. Whereabouts, do you remember? A. In front of Siegal's.

Q. The same consignee that you mentioned with respect to the last occasion? A. Yes, sir.

Q. What time of the day was that? A. It was in the morning.

Q. What time did you get to Siegel's? A. I got in Siegel's there, it was about 7 o'clock in the morning, I presume.

Q. Will you stand and look around the room again and
3995 tell the Court and jury if you see either that man Needelmann or Jordan here? A. (Standing) There is Needelmann sitting there (indicating).

Q. What row? A. First row, third man.

(A man stood up.)

Q. Is that the man? A. No, this other guy, the other side of him.

Mr. Cahill: If your Honor please, these remarks——

The Court: There will be no more remarks. I have warned the defendants about that before.

3996 Q. Is that one of the men you saw on that occasion? A. Yes.

Q. And by what name do you know him? A. By Georgie.

Q. Do you know him by his last name? A. Yes, Needelmann. That is what he told me his name was.

Q. He did on that occasion? A. Yes.

Q. Do you see the man Frank Jordan in the court room? A. Freddy Jordan?

Q. Freddy Jordan? A. I can't place his face right now.

Q. Where were you sitting when you first saw these persons? A. I was in the cab of my truck asleep that morning when these fellows come up, and they told me I needed a City man. So there was two of them, and I waited until Mr. Siegel opened up, and I went in and talked with him, as he was the receiver of the goods; so I talked——

Q. Before you went in and talked to Siegel, did you have a conversation with these two men?

The Court: He just told us that he did have.

A. I didn't have much of a conversation with them, no.

Q. After you talked to Mr. Siegel, what did you do? A. Well, I didn't do hardly anything. I just waited until he 3998
came.

The Court: Who came?

The Witness: Until Mr. Siegel came.

The Court: Well, counsel asked you what you did after you talked with Mr. Siegel.

The Witness: Well, after I talked to Mr. Siegel, I asked him——

The Court: No, never mind what you asked him. What did you do after you talked to him?

The Witness: I didn't do nothing, because he put Jordan to work on the truck to unload it.

The Court: Did you hear him do that?

The Witness: Yes, sir. I heard him and saw the man going to work. 3999

Q. How long did it take to unload the truck? A. From ten in the morning till two in the afternoon.

Q. Did you pay Jordan anything? A. No, I didn't; Mr. Siegel paid him.

Mr. Murray: Pardon me. Was that question, "Did you pay Jordan anything?"

Mr. Ennis: Yes.

Q. Did Needelmann remain there in your sight while Jordan was unloading the truck? A. No, Needelmann left and Jordan did all the unloading.

Q. Did you have any further conversation with Jordan before you left Siegel's? A. Other than Jordan asking me to take him down to, I think it was, Gorkin's Restaurant, and there is where I talked with Needelmann again. He asked me to see that my boss came up and signed a contract.

The Court: Whose restaurant?

The Witness: Gorkin's. I think that is the way it was pronounced.

4001 Q. Where was that restaurant? A. To give you the exact address I couldn't right at the present time.

Q. Was it in Brooklyn? A. No, it was in New York, not far from the tunnel.

Q. Not far from the Holland Tunnel? A. That is right, sir.

Q. What did you say, or did you say anything when Needelmann spoke about your boss coming up? A. Well, I told him I would tell him; maybe the boss would see him later.

Q. Did he make any reply to that? A. He said, "Yes, please do have your boss come up."

Q. Was anything else said? A. No, there wasn't much else said because I left and started for home.

4002 Q. Did you on any subsequent occasion talk to anyone in New York City about unloading your freight here? A. Yes, there was a time later that I did talk with someone. It was around the winter of 1938.

By the Court.

Q. How long was it after this occasion when you saw Needelmann at Gorkin's Restaurant? A. How long after?

Q. Yes. A. What do you mean?

Q. I want to find out what you mean by the winter of 1938. A. Well, this was in—well, it was, I would say, February, March, or February, 1938.

Q. That would be a few months after the occasion that you went to Gorkin's Restaurant? A. Yes, that is right.

By Mr. Ennis.

Q. Where was that conversation held? A. That was held up in front of Siegel's again with a little thin fellow, a small fellow who was there.

Q. Do you know his name? A. No, I don't.

Q. Was he alone? A. No, he was by himself. 4004

By the Court.

Q. Do you see him here? A. No, I can't say I do.

Q. Had you ever seen him before? A. No, I never.

Q. Have you ever seen him since? A. No, I never.

By Mr. Ennis.

Q. Did he say to you who he was?

Mr. Maguire: Objected to.

The Court: I will sustain the objection to that.

By the Court. 4005

Q. Did he show you anything? A. What did you say?

Q. Did he show you anything? A. Yes, he showed me this union book. He asked me did I have a book, and I told him I did. I asked him where was his book; and he showed it to me, and it wasn't paid up. I said, "Buddy, from where I come from you can't work without a paid up book." So he tried to stop me from unloading. So I had a helper with me that day, and he was trying to buffalo my helper

to keep him from unloading. Well, I jumped off the tailgate then and stood in front of him and told my helper to take the goods on in. So he says, "You' a tough guy?" So I says, "I am not tough, but I am for what is right." So he says, "Okay, buddy, I'll be back after a bit." So he went on down to the corner, or he must have caught a street car or another ride, and I haven't seen him since, because I was unloaded and out of the city again.

By Mr. Ennis.

Q. Of what union are you a member? A. What did you say?

4007 Q. Of what union were you a member at that time? A. 590, South Jersey.

Q. Did you examine his book?

The Court: He said he did.

A. Yes, I looked at this little fellow's book.

Q. What did you see in it? A. That he was an 807 man, but his book wasn't paid up. It was about two months' back.

Q. When was the next occasion, if any, upon which you discussed in New York the unloading of your freight? A. There was another time I was down at Pier 13.

Q. About how long was that before or after the occa-
4008 sion you have just testified about? A. That was about a couple of weeks later.

By the Court.

Q. By "Pier 13" do you mean in New York or in Brooklyn? A. New York, East River.

Q. Ward Line? A. That is right, sir.

By Mr. Ennis.

Q. Whom did you see there? A. Well, there was a fellow jumped off of another truck and told me——

Mr. Murray: Objected to, the conversation.

The Court: Yes.

Q. Had you ever seen him before? A. No, I never.

Q. Have you ever seen him since? A. I can't say that I really did.

Q. Did he show you anything? A. No, he didn't, other than he had an 807 button on his cap.

Q. You saw an 807 button on his cap? A. I saw an 807 4010
button on his cap.

Q. Was there anyone with him? A. No, other than the driver was in the other truck and he was on the truck going down the street there.

The Court: Well, we will suspend at this point. A brief recess.

(Short recess.)

By Mr. Ennis.

Q. Mr. Wilson, did this man who had an 807 button on at the pier say anything to you? A. No, he told me to "go down the hall and get a City man on the truck.

Q. What did you say? A. I just said, "Okay," and he 4011
jumped on the truck, and I went down the street to Pier 13 and unloaded and left the City.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. On the first occasion that you met someone at the Williamsburgh Bridge, was that on the Brooklyn side of the Williamsburgh Bridge? A. Yes, sir.

Q. Did you drive over the Williamsburgh Bridge into the City of New York any time that day? A. Well, see, I came from New York going to Brooklyn.

Q. You went over the Williamsburgh Bridge into Brooklyn? A. That is right, sir.

Q. Is that correct? A. That is correct, sir.

Q. No one spoke to you on the New York side of the Williamsburgh Bridge, did they? A. No, sir.

4013 Q. Now, you say it was a man with a bad eye or one eye that did the talking on that occasion? A. That is right, sir.

Q. That was about what date? A. It was around, I would say, August of 1937.

Q. And from that day until you identified Mr. Furey in this court room had you seen Mr. Furey?

The Witness: Will you ask me that question again?

The Court: The stenographer will repeat the question.

Q. (Read.) A. Yes, I had saw him on another occa-
4014 sion; but not—he wasn't bothering me.

Q Well, how long after this incident did you next see Mr. Furey? A. Well, I should say it was about a month.

Q. Where did you see him? A. I was with another driver.

Q. I say, where did you see him? A. In New York City.

Q. Where in New York City? A. On Laight Street.

Q. On the street, was it? A. Yes, it was on the street.

Q. Did you have any conversation with Mr. Furey on that occasion? A. No, sir.

Q. Now, as a matter of fact, wasn't it a man named Truffler that you talked to on the Brooklyn side of the Williamsburgh Bridge on the occasion that you mentioned? A. With a man named what?

Q. Truffler. A. Truffler? I didn't say anything about talking to any Truffler.

The Court: No. He is asking you if it is not the fact that the man you talked to on the Brooklyn side of the Williamsburgh Bridge was not Truffler instead of the man you call Austin Furey.

The Witness: Well, the fellow that I identified looks very much like the fellow that I saw.

Mr. Murray: I was mistaken when I said Truffler. 4016
I meant Telford.

The Court: Telford?

Mr. Murray: Yes.

By the Court.

Q. Do you know a man named Telford? A. No, sir.

Q. Did the man whom you saw at the Brooklyn side of the Brooklyn Bridge have two good eyes? A. No, sir. This fellow had one bad eye.

By Mr. Murray.

Q. Well, do you know whether or not Telford has one bad eye also? 4017

The Court: Well, he says he never saw him; he doesn't know him. Can you answer the question?

A. Well, the fellow that I identified looks very much—

The Court: He wants to know if the man that he calls Telford has a bad eye.

The Witness: I do not know.

Q. Did you see a man named Telford who had a bad eye or one good eye in this court room a week ago Monday? A. No, I didn't.

Q. Now, Mr. Wilson, are you positively sure that the man that you spoke to was Mr. Furey? A. I could not say that I am sure, by the name; but I sure know a man's face when I see it.

Q. Well, do you make the identification through the face or through the fact that there is something the matter with one of Mr. Furey's eyes? A. Well, sure he has a bad eye and I know his description of his face.

Q. You are sure of that? A. Sure I am sure of it.

4019 Q. Now, can you fix the date when you say you spoke to a man named Freddy Jordan and Georgie Needelmann in front of Siegel's in Brooklyn? A. That was in the fall, around October.

Q. That was at seven in the morning, was it? A. Yes, sir.

Q. What time had you started from Salem? A. I left Salem at midnight.

Q. And what time did you arrive in front of Siegel's? A. It was about seven in the morning.

Q. On that occasion you say that Mr. Siegel put Jordan to work? A. Yes, sir.

Q. You didn't pay him? A. No, I didn't.

Q. Did he ask you to pay him? A. No, he didn't.

4020 Q. Now, in the winter of 1938 you say that you saw a little fellow that you have not seen since who talked to you in front of Siegel's; is that right? A. Yes, sir.

Q. And you asked to see his union book, did you? A. Yes, sir.

Q. And your observation was that he was in arrears in the payment of his dues? A. That is right.

Q. What was the name of the book? A. The name of the book?

Q. Yes. A. International Brotherhood of Chauffeurs & Truckers.

Q. What was the name of the owner of the book? A. I can't remember, to tell you the truth.

Q. Did you read the name on the book? A. No, to be truthful, I didn't read the name on the book. I just looked through his book for his dues, to see if it was paid up.

Q. Was there a name on the book? A. Was there a name on the book?

Q. Yes. A. You mean was the man's name on the book?

Q. Yes. A. Well, yes, sure, it should have been.

Q. Did you see it on the book? A. No, I told you I wasn't looking for his name.

4022

Q. Did you know what part of the book the name of the man appeared on? A. Sure.

Q. Where? A. Mostly on the inside of the first page.

Q. You had some difficulty with him, didn't you? A. I did.

Q. He said to you, "You think you are a tough guy"? A. That is right.

Q. And you say that he tried to stop the unloading? A. That is right.

Q. Did you call the police? A. No, I didn't call no police at that time. I jumped in front of him and told my fellow to go on in and take the goods in.

Q. And after you had this difficulty with him, did you try to find out his name from the book, the union book? A. No. See, I looked at his book first. I was not interested in him at that time. I thought he probably would go on about his business, but he didn't; I had a little trouble with him; then I was sorry I didn't get his name and his ledger number.

4023

Q. When did you last drive to New York? A. My last trip to New York?

Q. Yes. A. Well, my last trip to New York, to come to the city to deliver, has been about three weeks ago.

Q. Well, were you in the city Monday of this week? A. Monday of this week?

Q. Yes. A. I was in here Monday, yes, but I didn't bring no load Monday.

Q. Now, did you testify before the Grand Jury?

Mr. Cahill: Objected to as immaterial.

The Court: I will let him say yes or no.

A. What did you say?

The Court: The stenographer will read the question.

4025 Q. (Read.) A. Did I testify before the Grand Jury? When, Wednesday? Monday?

Q. Any time.

The Court: One moment. I will exclude that question unless it relates to a period prior to the date of the filing of this indictment in this case. I am not going to permit any inquiry with respect to anything before the Grand Jury after this indictment was filed.

Mr. Murray: Well, my purpose in asking the question was because I assumed it was between December and May of 1938.

The Court: Well, I assumed that, until the witness asked whether you meant within the last week.

4026

Q. Did you testify before the Grand Jury in relation to this case on any occasion before May 31, 1938? A. No.

Q. Now, did you give a statement to anyone connected with the prosecutor's office concerning your testimony?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow him to answer yes or no.

A. Yes.

Q. When?

Mr. Cahill: I press my objection to that line, your Honor.

By the Court.

Q. Well, was it before May 1, 1938? A. No, it wasn't before May 31, 1938.

By Mr. Murray.

Q. Now, were you shown a picture at that time or at any time before you testified in this case of the defendant 4028
Furey? A. Was I showed his picture before then?

By the Court.

Q. When you made the statement here at any time before you came here as a witness. A. Yes, one of the F.B.I. men were down and had some pictures there for me to look over to see if I could identify any.

By Mr. Murray.

Q. When did you see Furey's picture? A. It has been now a couple of months ago, the first time I ever saw his picture.

Q. Have you seen them since a couple of months ago? 4029
A. No, sir.

Q. Did you see them within the last week? A. No, sir.

Q. Did you see Needelmann's picture a couple of months ago? A. Yes, sir.

Q. Did you see Needelmann's picture within the last week or two? A. Yes, sir, I saw his picture.

Q. Where did you see it? A. Well——

Q. Where? A. It was in this building here I saw it.

Q. When? A. Monday.

Q. Who showed it to you? A. I forget the fellow's name, but the fellow there with the glasses (indicating). He asked me did I know George Needelmann. I told him, "Sure I know Needelmann." So he give me some pictures. He said, "Pick Needelmann out for me." So I picked his picture out for him and give it to him.

Q. On that occasion you say that you did not see Furey's picture? A. I don't think I did.

Q. Do you remember whether or not you did? A. Truthfully, no.

4031 Q. And before you came on the witness stand to testify here today did you look at any of those men sitting over there on your right? A. Before I came here today?

Q. Yes. A. No, sir.

Q. Or at any time today? A. No, sir.

Mr. Murray: That is all.

Mr. Ennis: No redirect, your Honor.

(Witness excused.)

The Court: Next witness.

JULIUS E. ALLRED, residing at 207 Kelly Street, High Point, North Carolina, called as a witness on behalf of the
4032 Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your occupation, Mr. Allred? A. Truck driver.

Q. By whom are you employed? A. Hooks Motor Line.

Q. Where is that line located? A. High Point, North Carolina.

Q. How long have you been employed by Hooks Motor Line? A. Four and one-half years.

Q. Did you drive freight into New York City for the Hooks Motor Line at any period? A. Yes, sir.

Q. Did Hooks Motor Line have a terminal in New York in January of 1938? A. January of 1938? Yes, sir.

Q. Where? A. At 304 Spring Street.

Q. Do you recall an occasion about that time when you had some conversation about loading freight at that terminal? A. Yes.

Q. Where did that conversation take place; inside or outside the terminal? A. The first conversation took place outside the terminal.

4034

Q. What time of the day? A. Between 5 and 6 o'clock.

Q. In the morning or afternoon? A. In the evening.

Q. Had you driven a truck around New York City making deliveries that day? A. Yes.

Q. Did you do the unloading yourself? A. Yes.

Q. Did you have anyone with you? A. A helper. I had a helper with me.

Q. Was that a helper from North Carolina? A. Yes.

Q. Before this conversation about five in the afternoon, on your trip around the city did you have any conversation about loading or unloading your goods that day? A. Not that day.

Q. You did not? A. No.

Q. Well, going to the conversation at 5 o'clock, do you know the persons who were present at that conversation? 4035

A. I think I remember some of them.

Q. Do you know some of them by name? A. Yes.

Q. Who was there? A. George Needelmann.

Q. Who else? A. Ed Weinberger or something like that.

Q. Who else? Was Mr. Hooks there? A. Yes.

Q. Were any other drivers for Hooks Motor Line there? A. Yes. Sam Yawger.

The Court: Y-a-w-g-e-r.

The Witness: I couldn't tell you, sir.

Q. Had you seen the person you called George Needelmann before that day? A. Yes, several times.

Q. Where had you seen him? A. Around 304 Spring Street.

Q. Had you seen the person you called Weinberger, Ed Weinberger, you said? A. Yes.

Q. Had you seen him before? A. I seen him around there, the same place.

Q. Did you see either of those persons thereafter? A. I haven't seen them since the last night we were in there,

4037 the night we moved.

Q. The night you are testifying about? A. That is right.

Q. Will you stand and look around this court room and tell the jury if you see those two persons here? A. (Witness standing) The second in the back row is one, Ed.

Q. The second in the back row against the wall? A. From the front, lower end.

Q. I am afraid I don't understand. A. The second row.

Q. And how far? A. The second seat.

Q. The second row, second seat? A. Blue suit, reddish necktie.

Mr. Ennis: Will the clerk call the name of Edward Weinheimer?

The Clerk: Edward Weinheimer.

4038 (A man stands.)

Q. Is that one of the men? A. Yes.

Q. Do you see the man you called George Needelmann here? You may step down and look around if you wish, Mr. Allred. A. I couldn't say for certain. It looks like the one on the end (indicating).

Q. On the end? A. Yes.

Q. In the first row? A. First row.

Q. Did you see that person there? A. Yes, I seen him there, too.

Q. Well, is the person whom you knew as George Needelmann— A. I don't believe that is George Needelmann.

Q. In addition to Edward Weinheimer and the person you speak of as George Needelman, were there other persons there? A. There were three at the time.

Q. Three at the time? A. There were three of them at the time.

Q. You don't see— A. It has been a long time. I can't place some of them.

Q. How were these men dressed? A. In working clothes. Just plain working clothes. 4040

Q. You do not now see the man whom you knew as George Needelmann? A. I can't say as I do.

Q. What was the conversation? A. The conversation—

Q. With Ed Weinheimer and these other two men? A. The conversation I overheard was that we couldn't move out.

Q. What did Hooks say? A. Hooks told them he was moving out, that if they let him move out he would leave the place and not come back there.

Q. What did they say to that? A. Nothing doing, that he wasn't moving out.

Q. Was your truck parked at the station or warehouse? A. My truck was parked at one of the loading platforms outside the door. We had opened the door.

Q. Who opened the door? A. Hooks opened the door. 4041 Then one of them pushed—would push him away and close the door each time.

Q. Which one? A. Ed. Ed Weinheimer.

Q. Ed Weinheimer? You saw him push Hooks away and close the door? A. Yes.

Q. Was the door opened again? A. Several times, and closed each time.

Q. Who closed it? A. Ed closed it part of the time and one of the other fellows closed it part of the time.

Q. Did these other persons remain there during this entire incident you are relating? A. Two of them did.

Q. What did the other one do? A. One left and went somewhere and came back with seven or eight more.

Q. How long did it take him to go away and come back with seven or eight more? A. Around, I would say, roughly speaking, around ten minutes.

Q. Now, when he came back with seven or eight more was there some conversation? A. Yes. There was an argument. They kept arguing until Hooks called the police.

Q. Before Mr. Hooks called the police did you look at these seven or eight more persons? A. Just merely glanced
4043 at them.

Q. Had you seen any of them before? A. Some of them I had.

Q. Will you stand and look around the court room and tell the Court and jury whether you see any of those persons here? A. I can't seem to remember.

Q. You can't remember any particular— A. I can remember some of the faces I seen, but by name I don't know.

Q. Well, apart from names, do you see anyone here whom you saw with Ed Weinheimer or Weinberger as you stated, on that occasion? A. Outside of the ones I have already said I can't place the rest of them.

Q. Well, did I understand you to say that the first man in the first row, you saw him there? A. Yes.

Q. Well, was he one of the three men at the beginning
4044 or did he come back with the other men? A. I don't remember whether he stayed there or left. There was one left.

The Court: Well, the question was whether he was one of the first three that you saw there.

The Witness: He was there.

The Court: Or whether he was one of the seven or eight that came later.

The Witness: He was there with the first three. He was one of the first three.

Mr. Ennis: May the clerk call the name of George Stolowitz.

The Clerk: George Stolowitz.

(A man stood up.)

Q. Is that the man you saw on that occasion? A. I seen him there, yes.

Q. Now, what happened there in your sight after Mr. Hooks called the police? A. The police came. They didn't seem to know what to do.

The Court: Strike that out. 4046

Q. Just what you saw and what was said. A. All I can say is a lot of arguing on both sides. They explained their side and we explained ours.

The Court: You don't mean the police?

The Witness: The union fellows.

Q. Do you remember anything that was said? Any of the words that were used on either side? A. I can't say as I do.

Q. Was anything said about loading your truck? A. Yes. Hooks told the police he wanted protection to load his truck, that he was moving out. As I remember, they said something about not moving out after the police came, 4047 but during the argument one of these fellows told me I better shut up or he would see that I did get put under a trolley car, which was promised me earlier in the argument.

Q. You would get put where? A. That I would be put under a trolley.

Q. Under a trolley? A. Yes.

Q. When was that said? A. That was said a few days prior to our moving out.

Q. It wasn't said on this particular occasion? A. It was said over again on this particular occasion.

Q. And that remark had been made to you before? A. Yes.

The Court: By the same man?

The Witness: The same man.

Q. Do you remember anything else that was said? A. They told Hooks that he could get police protection there, but there was no protection over in Jersey for us. The
4049 police went with us to the ferry to see that we got on the ferry all right.

Q. You got on the ferry all right with this police escort? A. Yes.

Q. Do you recall any other occasion in New York City when you spoke to any of the men you saw on the occasion you have just mentioned? A. We stopped at Avenue A——

Mr. Maguire: I move that it be stricken out.

The Court: Yes. Strike out the answer. Repeat the question.

(Question read.)

The Court: The question is whether you recall any other occasion.

4050 The Witness: Where I was stopped with these men?

The Court: Yes.

The Witness: That was on Avenue A.

The Court: When was it?

The Witness: The 1st of March, 1938. We were kept from unloading there.

Mr. Maguire: I move to strike it out.

The Court: Strike it out.

Q. Do you remember what load you had at that time? What the merchandise was? A. Furniture.

Q. Furniture? A. Yes.

Q. Do you recall the name of the consignee on Avenue A you were taking it to? A. Yes, sir.

Q. What was his name? A. David Diamond.

Q. David Diamond? A. Yes, sir.

Q. Did you have a conversation about unloading your truck? A. Yes.

Q. Was that conversation held with a man whom you saw on the occasion——

The Court: No, no. Was that conversation had with anyone whom you had ever seen before or have ever seen since? 4052

The Witness: Yes.

The Court: Now, do you know who the man was?

The Witness: I know his face. I don't know the name.

By the Court.

Q. Where had you seen him before that at all? A. I had seen him before at 304 Spring Street.

Q. Was he at that time in company of any of the persons whom you have heretofore identified? A. Yes.

Q. Which ones? A. George Stolowitz was the one. 4053

By Mr. Ennis.

Q. What was the conversation with that man?

Mr. Maguire: Objection.

The Court: Overruled.

Mr. Maguire: Exception.

A. You mean the exact conversation?

Q. Well, as best as you remember it. A. At this time?

Q. Yes. A. We had unloaded the truck, had the furniture off in the store. They came up saying we can't unload without putting a union man on and we argued that we couldn't put a union man on because we weren't authorized to put on a union man unless Hooks said so. So they went in and talked to Diamond. Diamond told us to take out furniture and put it back on the truck. He said he would get in trouble if he accepted it without a union man on the truck.

Q. What did you do then? A. We put it back on the truck.

4055 Q. Where did you take it? A. We hauled it around quite a while and finally had to put a union man on the truck.

Q. And delivered it? A. Yes.

Q. Did you personally pay the union man you put on the truck any money? A. Yes, sir. $9.42.

Q. How long did it take to unload the furniture? A. About five hours.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. Well, on that occasion on March 1, 1938, what time did you start from High Point, North Carolina, on your journey to New York? A. About the 27th of February.

4056 Q. How many hours were you on the road coming from High Point to New York? A. Twenty-four hours.

Q. How long? A. Twenty-four hours.

Q. Did you go to bed any place? A. Yes, sir. I went to the Strand Hotel, Tenth Avenue and 14th Street that night.

Q. The Strand Hotel is in New York, isn't it? A. Yes.

Q. Were you constantly on the road for twenty-four hours before you went to bed in the Strand Hotel in New

York? A. We went to bed when we arrived here with the exception of sleeping in our sleepers that we have.

Q. Did you go to any hotel or any place else during the twenty-four hours that you were on the road coming from High Point, North Carolina, to New York? A. It would only be sleeping in our sleepers.

Q. Were you and your helper constantly on the truck for twenty-four hours of the journey from Carolina to New York? A. Yes.

Q. Were you the driver of your truck? A. Yes.

Q. Did you have a helper? A. Yes.

Q. What was his name? A. Sam Yawger.

Q. Is he still employed by Hooks. A. No, sir.

4058

Q. When did you last see him? A. A year and a half ago.

Q. Did you belong to a union? A. I did.

Q. Did you belong to a union in March of 1938? A. No, sir.

Q. Did you belong to a union at any time between December, 1936, and June, 1938? A. No, sir. There was no union, no truckers' union in High Point.

Q. Now, how large a truck were you driving on this trip that we spoke of that resulted in your going to Avenue A in New York to the Diamond furniture place? A. Overall length is 43 feet.

Q. How many tons was the truck? A. A ten-ton truck and we had around six tons on.

Q. Had you seen Stolowitz before that occasion? A. 4059
Yes.

Q. Where had you seen him? A. 304 Spring Street.

Q. Did you ever talk to him? A. A few times, yes.

Q. Where did you talk to him? A. On Spring Street.

Q. What was the conversation you had with him? A. About putting union men on these trucks.

Q. Did he ask you to try to get your boss to sign a union contract? A. Yes.

Q. That was about what you talked about, wasn't it? A. Yes. And we had to have a union man on the truck if we delivered.

Q. Each time that he talked to you at 304 Canal Street did he ask you to try to prevail upon your boss to sign a union contract? A. He never talked to me on Canal Street; it was Spring Street.

Q. Spring Street, rather; I am sorry. Did he on these ocasions ask you to prevail on your boss to sign a union contract? A. He did.

Q. Now, you testified, did you not, that in January, 1938, at the terminal at 304 Spring Street, about 5 or 6
4061 o'clock in the afternoon, you had a conversation with George Needelmann? A. Yes.

Q. Weinberger, Hooks and Sam Yawger, is that right? A. That is right. Dickerson was there also, the one that runs the terminal.

Q. Now, did you see Needelmann here today? A. I couldn't pick him out, no.

Q. Did you have a talk with anyone representing the Government before you took the stand here during this week? A. Yes.

Q. Whom did you talk to? A. Mr. Marks.

Q. Anybody else? A. The fellow with him. I don't know his name.

Mr. Marks: Mr. Ennis.

4062 The Witness: I am bad on names, anyway.

Q. Do you recollect whether or not you talked to any F.B.I. man? A. Yes.

Q. What was his name? Do you see him here now? A. (No answer.)

Q. Did you see him here a few moments ago? A. I never talked to any F.B.I. man in the city here.

Q. Well, now, in that conversation that you had with Mr. Marks and his assistant this week, Mr. Ennis, were you shown any pictures? A. Yes, I seen pictures.

Q. Who showed you the pictures? A. One of these two sitting there (indicating).

Mr. Cahill: Mr. Ennis?

The Witness: Mr. Ennis.

Q. And Mr. Marks? A. I recognize him.

Q. Were you shown a picture of George Needelmann? A. Yes.

Q. Were you shown a picture of Stolowitz? A. Yes. I picked those pictures out. 4064

Q. Were you shown a picture of Weinberger, as you call him? A. Yes, I seen his picture too.

Q. Were you shown any other pictures? A. Lots of them.

Q. Now, in this conversation that you had at 5 or 6 o'clock at night in January, 1938, at the terminal at 304 Spring Street, was it dark at that time? A. When I drove out it was light—getting dark. Only it wasn't January, I don't believe; I believe it would be either the last of February or the first of March.

Q. Well, did you tell the District Attorney that it was about January, 1938? A. I believe so.

Q. Was it January, 1938? A. It was February or March.

Q. All right. Now, tell us how you fix the time as being February or March, if you please? A. It was in the second 4065 month. It was after Christmas. We didn't work for a week or two. We didn't make a trip. Then we made a few trips, like two trips a week, and it would have to be in February because we didn't make two trips in January, 1938.

Q. Well, was it on one of these trips in January, 1938, that you were present at this conversation at 304 Canal Street?

Mr. Cahill: Spring Street.
The Court: Spring Street.

Q. Spring Street rather? A. It was either February or March, we had a conversation that night.

Q. Well, do you say now that it was February or March because it occurs to you that it would be lighter at 5 or 6 o'clock in the evening in February or March than it would be in January? A. Well, I never paid that much attention to that.

Q. Well, where did this conversation take place? A. In front of the warehouse and inside of the warehouse.

4067 Q. What street? A. In the driveway of the terminal, and then inside the terminal.

Q. Now, was that the occasion when there was a discussion about Hooks moving the goods out? A. Yes.

Q. Were there any blows struck? A. Nothing, only just a slight push.

Q. Were there any blows struck, I said? A. No.

Q. Did any of the men present strike Hooks? A. No.

Q. Did Hooks strike anybody? A. No.

Q. And then you say that the police eventually came, is that right? A. That is right.

Q. The men there argued their side and Hooks argued his, is that correct? A. That is right.

Q. Then you went on your way? A. After the police came.

4068 Q. Yes, then you went on your way to Jersey, didn't you? A. Yes.

Q. And back to Carolina, is that right? A. Yes, that is right.

Q. Now, who said to you you better shut up or you would be put under a trolley car? A. George Stolowitz.

Q. Were there any trolley cars running in that neighborhood at that time, do you know? A. I don't think there is any runs close to it.

Q. No. They were all buses, weren't they? A. Some buses.

Q. He didn't tell you he would put you under a bus? A. No.

Q. Do you have trolley cars in your home town? A. No, sir.

Q. Or even buses? A. We have buses.

Q. Now, when was it you had this conversation with Stolowitz in relation to the Diamond Furniture Company? A. That was the trip before we moved out of the warehouse. I don't remember dates.

Q. Was that before? A. It was before.

Q. Now, you moved out of the warehouse in January or February, 1938, didn't you? A. It was either February or March. I couldn't say for certain which. 4070

Q. It wasn't January? A. I don't think it was. I know it wasn't.

Q. Well, do you know the month or can you give us any idea of the month you say you had that conversation with Stolowitz in relation to the unloading of the furniture at the Diamond plant? A. It would be February.

Q. Was it March 1st? A. No.

Q. Did you tell the District Attorney on your direct examination that it was March 1st? A. I don't remember.

Q. Do you remember what you told the District Attorney as to the time that the occurrence took place? A. At Avenue A?

Q. Yes, the Diamond. A. It was in the morning. 4071

Q. Well, I am looking for the month. A. February.

Q. That was February? A. Yes.

Q. You did say it was March, didn't you? A. I don't think so.

Q. I mean about a half hour? Did you tell the District Attorney it was March? A. (After long pause) I don't remember.

Mr. Murray: That is all.

The Court: Any redirect?

Redirect examination by Mr. Ennis.

Q. When you drove up from North Carolina and back to North Carolina from New York, did your helper drive part of the time? A. He drove half the time. Half the way.

Q. Half the way? A. Yes, that is right.

Q. Did you have beds on your truck? A. Yes, sir.

Mr. Ennis: That is all.

The Court: Witness excused. Next witness.

PAUL M. TRAPANI of 9211 35th Avenue, Jackson Heights, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Trapani, what is your present occupation? A. I am now chief accountant for the Kings County investigation in Brooklyn.

Q. Where were you employed in the early part of 1938? A. With the Federal Bureau of Investigation.

Q. In New York City? A. In New York City.

Q. You were a special agent? A. Yes, sir.

Q. Were you for a time assigned to the investigation of this case? A. I was, sir.

Q. Do you recollect going to Staten Island in about April, 1938? A. I do.

Q. Whom did you go there with? A. I went with Agent Robert Boyle and Agent Healy.

Q. Where did you go? A. We went to Port Richmond, Staten Island.

Q. Whom did you see there? A. At first we went to Port—I can't recall that name. It is a half mile from Port Richmond.

Q. Ivory? A. Yes, Ivory.

Mr. Murray: I move to strike out the answer as not responsive.

The Court: Oh, I will let it stand.

A. (Continued) And Mr. Boyle saw the people in charge and we then proceeded to Port Richmond and we looked for the Hummel Warehouse trucks, and we took photographs of the trucks coming in.

Q. Do you know incidentally where those trucks came 4076
from? A. From Philadelphia.

Mr. Murray: I object, if your Honor please, that apparently is not within his knowledge.

The Court: Well, he may state whether he knows of his own knowledge or not.

By the Court.

Q. Do you know of your own knowledge? A. Yes, I was told——

Q. No. I am not asking you what you were told. You have been with the F.B.I.? A. Yes.

Q. And with the and you know.
the difference between what you are told and what you 4077
know, don't you? A. Yes, your Honor.

Q. All right now. I am asking you if you know of your own knowledge where these trucks came from? A. No, sir.

Q. If you followed the trucks you would know from your own knowledge? A. That is correct.

Q. If somebody told you where they came from that would be knowledge from some other person. A. That is right.

By Mr. Marks.

Q. Did you see any of the trucks? A. Yes, sir.

Q. Did you see the name of any city or town on the side of the truck? A. I don't recall that.

Q. About what time of the day was that, if you remember? A. I think it was around 12 o'clock noon.

The Court: Well, did you take any photographs?

The Witness: Yes, your Honor.

Q. Whom did you see there? A. We followed the truck—

4079 Mr. Murray: I move to strike it out.

The Court: Strike it out. The question was, whom you saw there.

The Witness: I don't quite get that question.

Mr. Marks: I withdraw the last question.

Q. After you saw the trucks, what did you do? A. We followed the trucks, and after we followed the third truck we went down to meet the fourth truck and it was late, and after we went back with the fourth truck we saw two men there. One was Sam Reichler and the other was Morris Reichler.

Q. Will you stand up, Mr. Trapani, and tell us if you see those men in court? A. (Standing) Yes.

Q. Will you point them out, please. A. There is Sam
4080 Reichler and Morris Reichler (indicating).

Q. In which row? A. In the first row.

Q. Which seat? A. There is one empty seat here and it is the third and fourth seats from my left, looking at them.

Q. Your right, you mean? A. As I look at them, from my left.

Q. Well, you are pointing to your right? A. From my left to my right.

The Court: Well, which is your right side?

The Witness: This is my right (indicating).

The Court: No, it isn't. Which is your right hand?

The Witness: This is my right. Pardon me.

Mr. Marks: May the clerk call the names of Samuel Reichler and Morris Reichler?

The Clerk: Samuel Reichler, Morris Reichler.

(Two men stood up.)

Q. Are those the two men that are now standing? A. Yes.

Q. Did you see anybody else there, Mr. Grapani? A. There was another man by the name of Hearn. He was a 4082
tall, fat man.

Q. Did you or the other agents in your presence have any conversation with these men? A. Yes. Mr. Boyle talked to those men first and I joined him later.

The Court: Do you see Mr. Hearn here?

The Witness: No, sir.

Q. Will you tell us the conversation that you heard with these men? A. Well, Agent Boyle was doing most of the questioning and I heard him ask these men for their union books, and they produced union books, and they were also wearing Local 807 buttons on their hats.

Q. Did you see the union books? A. Yes. They were 4083
produced in my presence. Agent Boyle then asked them what was their reason for their being there; and I believe Mr. Reichler, Sam Reichler, said he was there in view of the fact that his brother was employed by the Miller Transportation Company.

Q. By the which? A. Miller Transportation Company; and we asked where his brother was and he said he didn't know at the time. Later, during the conversation, while

Agent Boyle was talking to Mr. Hearn Morris Reichler appeared and we questioned him and he said that he was loading some trucks of the Miller Transportation Company, and we asked him under what circumstances, and he stated then in connection with a previous agreement made between Mr. Miller of the Miller Transportation Company, and Mr. Hickey of Local 807, he was to help unload these Miller trucks, and if Mr. Miller refused to have Reichler unload the trucks, his trucks would not be permitted to unload in New York, and he was employed under those conditions.

Q. Did he say who Mr. Hickey was? A. Yes; a delegate
4085 for Local 807.

Q. Now, was there anything said about the Hummel trucks? A. I believe—I don't recall much of that conversation in view of the fact I was taking pictures at the time Agent Boyle was talking to Sam Reichler, in connection with the Hummel trucks.

Q. Well, was there anything said in your presence that you can now remember of the Hummel trucks? A. Only that Sam Reichler said the reason he was there was that his brother—he had gone there to join his brother who was unloading these—who was to unload the Miller trucks.

Q. Can you remember any other part of the conversation at that time? A. No, I can't.

Q. Did Hearn, the other man there, show you anything? A. He also showed me his union book, I believe.

4086 Q. And you looked at it? A. Yes, sir.

Q. Was he wearing anything on his person; on his clothing? A. He also had a Local 807 button.

Q. Do you remember any other occasion in May, 1938, Mr. Grapani? A. Yes, I do.

Q. Where did you go on that date? A. We went on Hudson Street at the warehouses of—I forget the name of the warehouses at this time. Anyway, it was in connection with these Perry trucks.

Q. Do you remember what street it was you went to? A. 600 Hudson Street.

Q. Whom did you go there with? A. With Agents Van Pelt and Boyd.

Q. Did anybody else accompany— A. No, sir—oh, yes; also the truck driver Calkin.

Q. Was he one of Perry's drivers? A. That is correct.

Q. What did you see when you arrived at Hudson Street? A. We seen about fifteen men standing around the Perry trucks.

Q. How many Perry trucks were there? A. I recall one. It might have been more. Then we went and talked to these men and I first talked to Ed Weinheimer.

4088

Q. Will you stand up and tell us if you see him in court? A. Yes.

Q. Where is he? A. He is the second man from the left in the second row.

(Man stands up in court room.)

Q. Is that the man that just now arose? A. Yes, that is correct.

The Court: Well, we will suspend there. We will adjourn until half past ten tomorrow morning.

(Adjourned to Thursday, May 2, 1940, at 10.30 A. M.)

4089

New York, May 2, 1940,
10.30 A. M.

TRIAL RESUMED.

(The clerk called the roll of the defendants and all were present.)

The Court: Proceed.

PAUL M. TRAPANI resumed the stand, and further testified as follows:

4091

Direct examination continued by Mr. Marks.

Q. Mr. Trapani, when you arrived at Hudson Street in May of 1938, how many men did you see there? A. About 15 men.

Q. And I believe yesterday at the close of the session you identified the defendant Edward Weinheimer as one of the 15? A. Yes, sir, I did.

Q. Do you know whether any of the others are in court now? A. No, I don't.

Q. You did not see them? A. I did not see them, no, sir.

Q. Did you have a conversation there with any of these men? A. Yes, sir, I did.

4092 Q. Will you tell us the substance of that conversation? A. First I had a conversation with Ed Weinheimer. I asked him what his reason was for being in the vicinity of the Old New York Forwarding Company where the Perry truck was parked, and he said that he was instructed by the union officials not to let the Perry trucks unload in view of the fact that the Perry truck was carrying a shipment of the Young Transportation Company, which company had signed a contract with the union, and in view of this the union officials requested that the Perry Com-

pany also sign a contract. I then told him that I was advised that the Perry truck had hired a Local 807 man to unload, as was the custom previously——

Mr. Maguire: I move to strike that out.

Q. Is that what you told him? A. Yes, I told him.

By the Court.

Q. Did you use those words? A. Beg pardon?
Q. Did you use those words? A. Yes.

The Court: Motion denied. 4094

By Mr. Marks.

Q. Proceed. A. And he said that that didn't make any difference; that the union official insisted that the Perry Company sign a contract. I then advised him that he was interfering with shipment of interstate——

The Court: What is that?
The Witness: He was interfering——
The Court: No. You say you had been advised?
The Witness: No. I then advised him that he was interfering with the flow of shipment of interstate and foreign commerce, and he was therefore violating the federal anti-trust laws; and he said 4095
that he did not think so in view of the fact that he was not using any violence. I then told Calkins, the Perry truck driver of the Perry trucks, that he could unload; and Weinheimer then told Calkins that if he wanted to unload in view of the tieup, why, it would be O.K. with him; and then I told Calkins to go ahead and unload, and Calkins says to me—in fact, he said to me——

By the Court.

Q. Who was present when Calkins said that? A. Yes.

Q. Who was present? A. Oh, Ed Weinheimer and a few of the other Local 807 men. He said, "I can't unload unless I get permission from Weinheimer, because if I do he will prefer charges against me in the union which will cost me loss of the job."

By Mr. Marks.

Q. What union, did he say? A. It was—of course, Calkins was a member of a local—some local, in Buffalo
4097 of the same union. Then I also had a conversation with another Local 807 man by the name of James Balucci. I asked him——

Mr. Maguire: No. I object to this, if the Court please.

By the Court.

Q. Where did that happen? A. At the same place.

Q. Anyone present? A. Ed Weinheimer was present.

The Court: Overruled.

Mr. Maguire: Exception.

4098 A. (Continued) And I asked Balucci the same question as to why he was in the vicinity of the Old New York Forwarding Company, and he said, in accordance with instructions received by two union officials. I asked him who the union officials were. At first he hesitated in telling me, and then later on he said Willie Campbell and Tom Hickey. I also asked Weinheimer who the union officials were that instructed him to be there, and he refused to tell me. Balucci in substance said the same thing, that

they were instructed to see that the Perry trucks did not unload unless the Perry Company signed a contract with the union. I told him at the time that I was not interested about the contract, as far as that was concerned, or as far as any labor disputes that they had; that being Federal agents we were only concerned with the fact that they were violating the Federal anti-trust laws, and we would have to see that they did not do it; and as far as their contracts were concerned and a labor dispute, why, regardless of their justification in that, we were not concerned at all. So after Calkins abided with Weinheimer's instructions not to unload, and everything was more or less peaceful, why, we left. There was nothing else for us to do. 4100

By Mr. Marks.

Q. Had the truck unloaded when you left? A. No, sir.

Mr. Marks: That is all.

Cross-examination by Mr. Maguire.

Q. You say that some time in April of 1938 that you went down to Staten Island? A. Yes, sir.

Q. And there you say you had a conversation with the two Reichlers? A. Yes, sir.

Q. Which Reichler did you see first? A. It was Sam Reichler, I believe—no; Morris Reichler, the one with the mustache. 4101

Q. Whom did he say he was working for? A. He didn't say who he was working for. He said his brother was working for the Miller Transportation Company and he was there to help his brother.

Q. Did he mention the fact that he was working for the Hummel people? A. The Hummel people?

Q. Yes. A. I don't recall that.

Q. Did you ask the first Reichler when you met him the type of work that he engaged in? A. I don't believe I asked him that question in view of the fact that——

Q. Did you or did you not, please? A. No, sir.

Q. Did you make any inquiries as to whether he loaded or unloaded trucks? A. I believe we did ask him something about it.

Q. Did you find out that he loads approximately four to five trucks a day? A. I don't remember the number, but he said he does load and unload.

Q. Did you also find out that 10 to 12 tons of soap went on this truck, each truck? A. I don't recall that.

4103 Q. Did you ask him how many hours per day he worked down there? A. No, sir.

Q. Now, the other Reichler; you say you spoke to him a little later, is that right? A. Yes, sir.

Q. Whom did he say that he worked for? A. He said he was unloading the Miller trucks.

Q. Did you ask him whether the Miller concern had a contract with the union? A. I don't recall that I did.

Q. Did you ask to have any contract exhibited to you? A. No, sir.

Q. Did you ask him whether or not the Miller Company had had contracts with unions in the city for more than 8 or 10 years past? A. I don't recall asking him that.

Q. Did you ask him how long he had worked for the Miller concern? A. No, sir.

4104 Q. Did he tell you then when you had a conversation with him that he had worked for the Miller concern for more than two years? A. He might have, but I don't recall.

Q. Did you ask him how many trucks he loaded a day? A. No, sir.

Q. While you were there did either of the Reichlers engage in the loading of any truck? A. No, sir.

Q. Now, how long did this take for this conversation that you had with the two Reichlers out at Staten Island? A. Oh, about twenty minutes, I would say.

Q. Now, you say that in May you went over to what street, was it? A. It was on Hudson Street. Hudson around 12th Street, I believe. I don't recall exactly.

Q. All the time you were there there was no show of violence, or nobody was assaulted, was there? A. No, sir.

Q. Nobody complained that anybody had been assaulted there that day, did they? A. Calkins merely complained that he was threatened.

Q. What did he say about that? A. He said that fifteen Local 807 men—fifteen men in Local 807 prevented him from unloading the truck.

Q. Is that the language he used? A. Yes.

Q. Now, what was the warehouse or the terminal that he was at at the time? A. Around 600 Hudson Street; around Hudson and 12th. 4106

Q. What is the name of it? A. The Old New York Forwarding Company.

Q. Now, did you inquire in any respect with reference to the men who worked on the platform at that warehouse? A. Yes. We talked to the men from the platform. I don't recall their names at this time.

Q. Did you ask them if they belonged to any union?

Mr. Cahill: I object to it as immaterial.

The Court: Overruled.

Q. Did you? A. I believe we did; I don't recall.

Q. What did they say? 4107

Mr. Cahill: I object to it as immaterial and incompetent, what they said.

The Court: I will sustain the objection.

Mr. Maguire: I respectfully except.

Q. Now, in any event, Weinheimer, after the conversation with you, did tell Calkins to go ahead and unload

in view of all the trouble that had been caused, is that right? A. Well, he didn't use just exactly that language.

Q. What language did he use? A. He said, "O.K. If you want to unload in view of the tieup, go ahead."

Q. Did Calkins have a helper with him? A. A man from Local 807, yes.

Q. What was that man's name? A. I think his name was Farici.

Q. While you were there the truck wasn't unloaded? A. That is correct.

Q. Weinheimer told you what they were desirous of was
4109 securing a contract with the Perry Express? A. That is correct.

Mr. Maguire: That is all.

The Court: Any further cross-examination? Any redirect examination?

(No response.)

The Court: Witness excused. Call the next witness.

ALFRED L. HUMMEL, residing at 3024 Greenleaf Street, Allentown, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

4110 *Direct examination by Mr. Marks.*

Q. Mr. Hummel, what is your business? A. In the storage and hauling business.

Q. What is the name of your company? A. Hummel Warehouse Company, Incorporated.

Q. Its main office is in Allentown, Pennsylvania? A. Yes, sir.

Q. How far is Allentown from New York City? A. About ninety miles by road.

Q. Do you haul any particular type of commodity? A. Yes, we do. We haul soap, Crisco and bulk products.

Q. For what company? A. Procter & Gamble Distributing Company.

Q. Where is their plant? A. At Port Ivory, in Staten Island.

Q. How many trucks did you operate in the early part of 1938? A. Eight.

Q. About how many a day did you send into New York City on an average? A. About five each day.

Q. Now, how many over-the-road drivers did you employ? A. About ten.

Q. Were they members of any union? A. Yes, they were.

4112

Q. What union? A. 773, in Allentown. That is all I know.

Q. Do you know with what international that is affiliated? A. I think it is called the Teamsters & Drivers Union.

Q. When you sent your trucks from Allentown to New York were they empty or loaded? A. They were loaded as far as Phillipsburg, New Jersey, as a rule and empty from there on to Staten Island.

Q. And they picked up these various products at the Procter & Gamble plant on Staten Island? A. Yes, sir.

Q. Where did they haul them to then? A. Back to Allentown for distribution from there.

Q. Do you know approximately how long it took to load one of your trucks at Staten Island? A. About an hour 4113
to an hour and ten minutes.

Q. Now, do you recall receiving a telephone call in the early part of 1938? A. Yes. It was in February; about the end of February.

Q. Do you know from whom that call was?

Mr. Maguire: Objected to.

The Court: He may answer yes or no.

A. Yes.

Q. From whom?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. Had you ever at that time met the person whose voice was on the telephone? A. No, sir.

Q. Have you met him since? A. Yes, sir.

Q. Can you now state if the voice which you heard on the telephone in February is the voice of any particular person whom you have met since? A. Yes, sir.

Q. Who was that person who called you? A. Sam Reichler.

4115 Q. Now, what was the conversation?

Mr. Boudin: That is objected to on the ground that there is no relation established.

The Court: Overruled.

A. Our driver called me from New Jersey and said——

Mr. Maguire: Objected to.

The Court: No, not what your driver said. What happened after your driver called you?

The Witness: He said we would have——

The Court: No. Don't tell us what he said, but what next happened. Did anybody else say anything?

4116 The Witness: I talked to Sam Reichler on the telephone.

Q. Did you call him or did he call you? A. He called me.

Q. What was said? A. And he said from that time on we were to pay $9.42 a day for the privilege of having a helper at the Staten Island plant, which was the Port Ivory terminal, and I asked him what for. He said, well,

that was something new that they were inaugurating and all he could say about it was we had to pay from then on, and I told him at that time we knew nothing of it and would have to investigate. Well, he said, we could do as we pleased, but hereafter each day we were to send down in cash $9.42 for the privilege of getting his services as a helper.

Q. Was there anything else said in that conversation? A. No, not at that time.

Q. Did he call you again? A. Yes. He called me three days later and he wanted to know where the money was. I told him at that time that we hadn't thoroughly made our investigation, that I didn't think we were going to pay it, and he said, "I think you will," and I asked him at that time if he thought it was a threat. He said we could take it for what it was worth, that if we didn't have the money down there in three days he didn't think our trucks were coming back. Well, that was all there. 4118

Q. Did you tell him whether or not you would send the money? A. I don't recall whether I would send the money or not.

Q. Did you send any money at that time? A. Yes, I did. I sent the money that he talked about in his first conversation for three days' work.

Q. At what rate? A. $9.42 for about an hour or two or three hours' work.

Mr. Maguire: I move that the latter part be stricken out. 4119

The Court: Strike it out.

Q. Did you have another conversation with him after the one you just described? A. Yes. We had another one about a week later.

Q. Over the telephone? A. Yes. He called me again and he wanted to know why we hadn't sent down the third

payment. I told him at the time I thought it appeared to me as if it was blackmail and graft and I didn't intend to pay him any more, and I said, "Furthermore, I don't know whether you people belong to any union or not for the reason that I called up Local 807 in New York three or four times" that week.

Mr. Maguire: May I ask if this is the conversation, Judge?

The Witness: Yes, sir.

Mr. Maguire: This is what you told him?

The Witness: This is the conversation.

The Court: I so understand it.

4121

Q. Go ahead. A. I called up 807 in New York to find out whether I could talk to any business agent of that union, and each time I called I never could contact him or the secretary of this union. I said, "Well, you can tell me whether this Sam Reichler is a member," and they said they never heard of him.

Q. Up to that time had Reichler in any of these telephone conversations said anything about the union? A. I don't remember whether he did or not. I say no.

Q. Was anything said in this conversation which you are now telling us about with respect to a union? A. Well, I wouldn't be able to say. I did in another conversation, but it has no bearing here.

4122 Q. Well, let us stick to this one for the moment. Was there anything said in this conversation, anything else you haven't told us? A. No, not in this one.

Q. Now, did you have another conversation with Sam Reichler after that? A. Yes. We had one in Allentown.

Q. Where did you see him in Allentown? A. In our office.

Q. Was anyone with him? A. Yes, sir. There was another man with him.

Q. Was that the first time you had seen him? A. Yes, sir.

Q. Would you recognize him if you saw him today? A. I would recognize Sam.

Q. Would you recognize the man that was with him? A. Well, perhaps; I don't know.

Q. Will you stand up, Mr. Hummel, and tell us if you see either or both of those persons in court? A. (Standing) Sam is over there with the mustache, the second one from the left (indicating).

Q. In which row? A. First row.

Mr. Marks: May the clerk call the name of Sam Reichler? 4124

The Court: Yes.

The Clerk: Sam Reichler.

(A man stood up.)

The Court: Is the man who has arisen the man?

The Witness: That is the man.

Q. Now, do you see the other one? A. Yes, sir.

Q. Where is he? A. He is in the back row.

Q. Which seat? A. The sixth seat.

Q. From which side? A. From the left.

Q. Well, there is an empty chair there. Could you tell us with respect to the empty chair? A. He is in back of the man holding his cap, in the first row; he is in the second row; but the man I identify is in back of the man with 4125 the cap, green shirt.

Q. I am not sure I know which one you are indicating. A. Well, there are six on this side and six on that side, and he is in the second row.

The Court: Aren't there two empty chairs in the back row?

The Witness: I mean the middle row.

The Court: The middle row?

The Witness: Yes.

Q. You say he is the middle man in the second row? A. Yes, that is right.

Q. Suppose you count from the end nearest the bench. Which one is he starting from your right? A. Not including the bench?

Q. Starting from your right? A. Sixth.

The Court: Well, now, let us count from this end.

The Witness: I did.

4127 The Court: From this end up here (indicating)?

The Witness: That is what I did.

The Court: Which one is he?

The Witness: The sixth one.

The Court: All right.

Mr. Marks: May the clerk call the name of Morris Reichler?

The Clerk: Morris Reichler.

(A man stood up.)

Q. Is that the man? A. That is the man.

Q. Now, did you have a conversation with those men? A. Yes, sir.

Q. Will you tell us what the conversation was? A. At
4128 that time I happened to be in the warehouse. The bell rang and I was called in. When I got in I saw these two men in the office and I walked up to them and asked them what they wanted. They threw a contract on the—they threw a piece of paper on the table and said, "Here is a contract for you to sign." I said, "What is it all about?" They said, "It is a union contract; you have to sign it." I said, "We didn't sign any papers here for the local in Allentown; therefore we are not going to sign any for the New York union."

Q. Do you know what union it was that the contract was for? A. I had not opened it and I did not look at it. They mentioned the fact that it was for the union, 807, in New York; therefore, I assumed that was correct. And I said I did not think we were going to sign the contract that day for the reason that we wanted to take it up with our attorneys; it was a legal matter and very important to us. It meant a lot of money to us which we had to pay out which we felt was not necessary. And I said, "By the way, who are you?" And the one was the mustache said he was Sam Reichler, and he said, "This is my brother." He didn't mention his name. He only said, "This is my brother." I said, "Well, we are not going 4130
to sign it." They told me, "I think you are going to sign it. I think you will sign it." I said, "No, we would not," and I says, "As far as I am concerned, the conversation is finished." They said, "Not until you sign the contract." I said, "It is finished," and I escorted them to the door.

Q. Is that all that took place? A. Yes, sir.

Q. Did you sign? A. No, sir.

Q. Now, did any of them call you on the telephone after that? A. Yes, sir. About the 27th of March I got another telephone call from Sam Reichler. He said he waited long enough for his money——

Q. Excuse me. This is all 1938, is it not? A. This is all 1938.

Q. Yes. Go ahead. A. It seemed that he had worked a few days, three or four—I don't remember how many— 4131
and he was getting tired of waiting for his money. I told him that I felt that the whole thing was restraint of trade, and it stank of graft and racketeering, and I did not intend paying it. Well he said, "If you don't pay your trucks are not coming back." I said, "What are you going to do?" He said, "You'll find out. We will do plenty." I said, "All right, if that is the way you feel about it, good-bye." And I hung up, and I immediately called State Police——

Mr. Maguire: No, I object to that.
The Court: Yes, not responsive. Strike it out.

Q. Did you ever speak to Sam Reichler again? A. That was the last time.

Q. Did you ever speak to Morris Reichler again? A. No, sir.

Q. After that telephone conversation did you call any one? A. Yes, I called the State Police——

Mr. Maguire: No. I object to that.
The Court: He may answer "Yes." Strike out after that.

4133 The Witness: Yes

Q. Whom did you call?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

A. State Police in New Jersey.

Q. Did you call anyone else? A. Yes, I——

Mr. Maguire: Same objection.
The Court: Overruled.
Mr. Maguire: Exception.

4134 Q. Whom else did you call? A. I called Mr. Amen, as I knew the name then. Is that all you want to know?

Q. Where did you call him? A. In New York.

Q. Do you know where?

Mr. Maguire: Objected to.
The Court: Well, does it make any difference where he called him?

Mr. Marks: Well, I would just like to have Mr. Amen identified.

By the Court.

Q. Well, did you see Mr. Amen after that? A. Yes, sir.

The Court: That is the way to identify him.

By Mr. Marks.

Q. Where did you see him?

Mr. Maguire: Objected to. 4136

The Court: Sustained.

Q. Did you know who Mr. Amen was?

Mr. Maguire: Objected to.

The Court: Sustained.

By the Court.

Q. Did you have a conversation with Mr. Amen? A. No, sir.

Q. Well, did you have a conversation? Didn't you say anything at all to him? A. I called his office.

Q. Well, didn't you say you saw him afterwards? A. I saw him afterwards. 4137

Q. When you saw him afterwards didn't you have any conversation with him at all? A. At the——

Q. No. Just did you have any conversation? A. Yes.

Q. And after you had a conversation with him did you see anybody else? A. Well, I really have to put it in another way.

The Court: All right.

By Mr. Marks.

Q. Did you see anyone else? A. Yes.

Q. Who?

Mr. Maguire: Same objection.
The Court: Overruled.
Mr. Maguire: Exception.

A. Mr. Lewis.

Q. Where did you see him? A. In his office.

Mr. Maguire: Same objection.
4139 The Court: I will allow it.
Mr. Maguire: Exception.

By the Court.

Q. Where did you see him? A. In his office.

Q. Where is his office? We don't know. A. In this building.

Q. Is Mr. Lewis here? Do you see him here? A. Just a moment, please. (Looking around) I do not see him, no, sir.

By Mr. Marks.

Q. Did you ever see either of the Reichlers after that?
4140 A. No, sir, I did not.

Mr. Marks: That is all.

Cross-examination by Mr. Maguire.

Q. Your trucks did come back, did they? Your trucks did come back, didn't they? A. Yes, with my help.

Q. And you have been operating since? A. Yes, sir.

Q. Now, you say that approximately five of your trucks come in in a day to Port Ivory? A. Correct.

Q. And how many tons do they normally carry back to Allentown? A. Are you talking about 1938?

Q. Yes; limit yourself to that. In 1938. A. Thirty tons.

Q. How many? A. Thirty tons.

Q. To a truck? A. No; six to a truck. We were running small trucks at the time.

Q. And each truck had 6,000— A. 12,000.

Q. I mean six tons loaded onto it, is that right? A. That is right.

Q. Now, what was the type of package that was loaded 4142
onto the truck? A. There was cartons of soap.

Q. And approximately what was the weight of each carton? A. About forty-three pounds.

Q. Approximately how many cartons went to make a six-ton load? A. About 275.

Q. And you say that it takes approximately an hour and a half to load a truck with— A. No, sir, I didn't say that.

Q. What was your statement then? A. Between an hour and an hour and ten minutes.

The Court: To unload or load?
The Witness: Load.

Q. And you had five trucks going in there each day? A. 4143
Approximately.

Q. Now, you say that your road drivers were members of a labor union in Allentown? A. That is right.

Q. In 1938 did you have a contract with that labor union in Allentown? A. No, sir.

Mr. Cahill: Objected to as immaterial.
The Court: Overruled.

Q. Did you? A. No, sir.

The Court: He said so on direct examination.

Q. And in 1937 up to May 31, 1938, did you ever have any conversation with a representative of that union in Allentown? A. Yes, sir.

Q. Now, did you at any time see the form of contract, uniform form of contract that that local union in Allentown required?

Mr. Cahill: Objected to as immaterial.

The Court: Sustained.

Mr. Boudin: Exception.

4145

Q. Did the local union in Allentown ever submit a contract to you for signature?

Mr. Cahill: I press the objection.

The Court: Overruled.

Q. Prior to May, 1938?. A. Yes, sir.

Q. And you did not sign it? A. No, sir.

Q. Have you that contract that was submitted to you prior to May, 1938, by that Allentown union?

Mr. Cahill: I press the objection that it is immaterial.

The Court: Overruled.

4146

A. No, sir.

Q. What did you do with it? A. Handed it back to them.

Mr. Maguire: That is all.

Mr. Ennis: No redirect.

The Court: Excused. Next witness.

(Witness excused.)

Mr. Ennis: I will call Earl Fowser.

EARL FOWSER, residing at Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mr. Fowser? A. Trucker.

Mr. Murray: May I have the answer repeated, if your Honor please?

The Court: "Trucker."

Q. Were you engaged in that business in 1937? A. I was. 4148

Q. What was the name of your company, if any? A. Fowser Fast Freight.

Q. Between what points——

The Court: Will you try to speak a little louder, Mr. Fowser?

The Witness: Yes. Fowser Fast Freight.

Q. Between what points did you haul merchandise? A. Salem, New Jersey and New York, and various other points, Baltimore and so forth.

Q. What kind of merchandise did you haul to New York City? A. Glass containers.

Q. About how many truckloads a week did you haul in 1937? A. During a slack season it would be possibly four a week, and when we are busier, possibly twenty. 4149

Q. At the beginning of 1937 who unloaded your trucks in New York City? A. The drivers.

Q. Your drivers? A. That is right.

Q. About how long did it take to unload your trucks on the average? A. Anywhere from a half hour to two or three hours.

Q. Did a time come when your men did not unload their own trucks in New York City? A. It did.

Q. Do you recall the time? A. We first was stopped——

Mr. Murray: I move to strike it out.

The Court: Strike it out. Tell us the time; that is all we want to know.

A. (Continuing) During the summer, I would say, of 1937.

Q. Did you come to New York at that time? A. I did.

Q. How did you come there? A. I came by truck with one of the drivers.

4151

Q. In one of your trucks? A. That is right.

Q. How did you come into the City from New Jersey? A. By the Holland Tunnel.

Q. When you emerged from the Holland Tunnel in New York City; what did you see? A. There were some union men there, which we later found out to be union men, stopped us——

Mr. Murray: I move to strike it out, if your Honor please.

The Court: Strike it out. There were men there.

Q. You saw some——

4152 *By the Court.*

Q. How many? A. I didn't count them.

Q. Well, about how many? A. I saw fifteen or twenty; possibly more; there was quite a crowd of them.

Q. Where were they with respect to the entrance of the tunnel? A. Just as you come out of the tunnel and make the left turn going toward Sixth Avenue, right at the entrance there.

By Mr. Ennis.

Q. Did your truck stop? A. Yes.

Q. Were those men near your truck? A. Yes; they came up all around the truck.

Q. Did those men show you anything? A. No, they did not.

Q. Did you see anything on their persons? A. Well, nothing out of the ordinary, no.

Q. Do you know the name of any one of those men? A. Why, one of them we found to be named Pine.

By the Court.

4154

Q. Well, had you ever seen any of these men before that time? A. No, sir.

Q. And did you ever see any one of them after that time? A. Not to the best of my knowledge.

By Mr. Ennis.

Q. Did you go any place with any of those men? A. One of them took me up to 74 Varick Street to sign a union contract.

Q. Is he the man whom you call Pine? A. That is right.

Q. And you went with him to 74 Varick Street? A. That is right.

4155

Q. Where was your truck at this time? A. Still standing on the street.

By the Court.

Q. Where? A. At the same place they stopped us, pulled over to the curb; I don't remember the name of the street there.

Q. Well, do you know where 74 Varick Street was with respect to any other street? A. Yes, it was just across the square from where the truck was stopped; sort of a square there.

By Mr. Ennis.

Q. When you went to 74 Varick Street did you see other persons there? A. Up in the office?

Q. Yes. A. Yes.

Q. And in the presence of this man whom you call Pine? A. He took us up there to him and told him that here was Fowser.

4157 Q. Did he tell you in their presence who they were? A. No, did not.

Q. Did you have a conversation in that office with Pine and these other persons? A. Not with Pine. The other fellows pulled out a contract and told me there was my contract, I could sign it and I would not have any more trouble.

Q. What did you say to them? A. I told him I wanted to read it over and think it over a while.

Q. What did they say to that? A. I don't think they said anything. I picked the contract up and I took it home with me.

Q. Did you sign that particular form of contract? A. No, I did not.

4158 Q. Did your trucks continue to make deliveries in New York City? A. Yes.

Q. At any time subsequent to that occasion in the summer of 1937 did you have any conversation with anyone about unloading your trucks in New York City? A. No; some of the trucks had been stopped——

Mr. Murray: I move to strike it out.

The Court: Strike out after "no."

By the Court.

Q. Were you in New York again after that? A. Some time following that.

Q. After you received this paper, this proposed contract, did you come to New York? A. Yes; but no right soon I wasn't.

Q. Well, how long after? A. Well, we finally signed a contract, if that is what you mean——

The Court: No, strike it out.

Q. How long after? A. Well, I don't know. I was in and out of New York right along, pertaining to that contract, or anything like that, I wasn't up here for a few months. 4160

By Mr. Ennis.

Q. Well, do you recall any subsequent occasion upon which you did discuss or did converse with someone in New York City about unloading your trucks, any particular occasion? A. Well, we had a——

The Court: No, not what you had. All that counsel asked you was whether you recalled any occasion when you were in New York and you talked to somebody about unloading trucks. That is all you were asked. 4161

The Witness: The answer is yes.

Q. Can you tell us the time of that particular occasion you have in mind? A. On Hughes Street, in Brooklyn.

Q. The place was Hughes Street in Brooklyn? A. That is where we were held up the next time.

Mr. Murray: I move to strike it out, if your Honor please.

The Court: Strike it out.

Q. Were you present on that particular occasion? A. No.

The Court: Well, you see you were asked about a conversation and not anything else. You volunteered to tell us something else which is not proper at this time, and I have to strike it out. Now, if you will just follow the question and endeavor to answer the question we will get along faster and you will be on your way home much sooner.

4163

By the Court.

Q. You were asked about a conversation, and then counsel asked you where the conversation was, and you said it was over on Hughes Street in Brooklyn. Now, you tell us you were not there at all. Now, where was the conversation that you were referring to that you did have? A. When I was present——

Q. Well, you could not have had the conversation if you were not. A. Well, I could have had over the telephone.

Q. You were asked about a conversation in New York. Now, did you have a conversation subsequent to the time when you were given this proposed contract? A. Yes.

4164

Q. And where was it? A. It was in a court off the Williamsburgh Bridge there. I do not know the name of the court, but in a court off the Williamsburgh Bridge there in Brooklyn.

By Mr. Ennis.

Q. Do you know what year or what time of the year that was? A. Probably in the fall of 1937.

Q. Now, with that particular time fixed in your mind, do you recall any conversation in New York City about unloading your trucks subsequent to that occasion? Subsequent to the conversation in some court in Brooklyn, in the fall of 1937, and taking your mind past that time, did you later have a conversation in New York about unloading your trucks? A. Yes; I had a conversation about unloading trucks several times.

The Court: No. What the United States Attorney wants to know is if you recall such a conversation following the time when you say you were at some court house in Brooklyn.

The Witness: Yes. 4166

Q. Did you on this subsequent occasion have a conversation about signing a contract? A. I did.

Q. Well, can you tell us the time of that conversation? A. That time that I think you are talking about would be in 1938, September.

Q. In September of 1938? A. Yes. I signed a contract at that time.

Mr. Murray: I move to strike it out.

The Court: Strike it out.

Mr. Ennis: If your Honor please, during the day at your Honor's convenience, may I make an offer of proof with respect to that matter and excuse the witness for the present? 4167

The Court: Yes. You can make your offer of proof at a quarter of twelve.

Mr. Ennis: Thank you, your Honor. That is all.

Mr. Murray: No questions from the defendant.

The Court: The examination is suspended.

(Witness temporarily excused.)

The Court: Next witness.

4168 *Clinton B. Newell—For Government—Direct.*

CLINTON B. NEWELL, residing at 184 South Broadway, Salem-Pennsville, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your occupation, Mr. Newell? A. Truck driver and foreman for Mr. Fowser.

Mr. Murray: Your Honor, may I ask that the name and residence be read?

The Court: Yes.

4169 (Clerk read name and residence.)

Q. Will you state again your occupation, please, Mr. Newell? A. At present?

Q. Yes, at present. A. Truck driver and foreman for Mr. Fowser.

Q. What business is Mr. Fowser in? A. Trucking business.

Q. What is his company? A. Fowser Fast Freight.

Q. How long have you worked for him? A. About four years.

Q. In what occupation were you engaged for him in 1937? A. Truck driver.

Q. Did you drive merchandise for him to New York
4170 City at that time? A. Yes.

Q. What kind of merchandise? A. Glass containers.

Q. At the beginning of 1937 did you unload this merchandise yourself? A. Yes.

Q. About how long did it take you to unload a load of glass containers on the average? A. An hour or two.

Q. Do you recall any occasion in 1937 when you conversed with anyone in New York City about unloading your merchandise? A. You mean had trouble unloading?

The Court: No. Just listen to the question. The stenographer will repeat the question.

Q. (Read.) A. Yes.

Q. About what time was that? A. It was in the summer.

Q. Of 1937? A. Yes.

Q. Where were you at the time in New York City? A. Taylor Wineries on Canal Street.

Q. What was your load on that occasion? A. Glass containers.

Q. Did you unload the glass containers yourself? A. No.

4172

Q. Did you have a conversation with persons about unloading them? A. Yes.

Q. How many persons? A. About eight.

Q. Where were those persons? A. Around the truck.

Q. Where did you first see them? A. In front of Taylor Winery on Canal Street.

Q. Were they there when you drove up? A. No.

Q. Had you started to unload your truck? A. No.

Q. Before you saw them? A. No.

Q. They came up while you were parked there? A. That is right.

Q. Did they show you anything? A. No.

Q. Did you see anything on their persons? A. No.

Q. Had you ever seen any of those persons before? A. No.

4173

Q. Did you ever see any of them thereafter? A. No, I could not say for sure.

Q. Did any of those persons tell you their names? A. No, they did not.

By the Court.

Q. Well, did any of those persons do anything with respect to the bottles which were on your truck? A. No.

Q. Who unloaded it? Did anybody unload your truck? A. Yes.

Q. Did any one of those men unload your truck? A. Yes.

Q. And what happened after that, if anything? A. We unloaded the truck in New York and Brooklyn and I paid the man and went home.

By Mr. Ennis.

Q. How much did you pay him? A. $9.42.

Q. Now, when you first saw these men, did any one of them say who or what they were? A. Yes, they said they
4175 were men from 807——

Mr. Maguire: Objected to.

The Court: Strike out all except the word "yes."

By the Court.

Q. Did the man who unloaded the truck say anything? A. He said the was a man from 807.

Mr. Maguire: May I move that that be stricken out?

The Court: Strike it out. The answer is yes or no.

Q. Did he say anything? A. Yes.

4176 Q. Is he the man to whom you paid $9.42? A. Yes.

By Mr. Ennis.

Q. What did he say to you?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

Q. What did he say to you? A. He said he was to unload the truck.

Q. What did you say to him? A. I told him I had nothing to do with that, about the unloading the truck; I could not give him my consent to hire the man for that day, so I had to call Mr. Fowser.

Q. You told him that? A. That is right.

Q. Did any of the men with him say anything to you? A. They said they were men from——

Mr. Maguire: No, I move to strike it out.
The Court: Yes or no?
The Witness: Yes. 4178

Q. What did they say?

Mr. Maguire: Same objection.
The Court: I will allow it.
Mr. Maguire: Exception.

Q. What did they say? A. He said he was a man from 807 and was to unload the truck when it came into New York.

Q. What else did you say? A. I told him that is what I was getting paid for.

Q. Was there any talk about you being a member of a union? A. Yes.

Q. What was said? A. They asked me if I belonged to the union; I told him yes, 590 of Vineland, New Jersey. 4179

Q. Was there any more conversation about that? A. No.

Q. Do you remember any occasion subsequent to that when you had some conversation in New York City about unloading your truck? A. Yes.

Q. When was that? A. It was a month or two later.

Q. Where? A. Royal Chemical in Craven Street in the Bronx.

Q. What was your load at that time? A. Glass containers.

Q. Did you unload your truck on that occasion? A. Yes.

Q. Before you unloaded it, did you have a conversation with anyone about unloading it? A. Yes.

Q. How many persons? A. There were several; there were four or five.

Q. When did you first see them? A. I was waiting out front for the place to open about 7 or 7.30.

4181 Q. About what time? A. About 7 or 7.30.

Q. Did they walk up to you? A. Yes.

Q. Had you ever seen any of them before? A. No.

Q. Have you ever seen any of them subsequently? A. No.

Q. Did they show you anything? A. No.

Q. Did you see anything on their persons? A. No.

Q. Did they say anything to you about who they were?

Mr. Maguire: Objected to.

The Court: He may answer yes or no.

A. Yes.

Q. What did they tell you about who they were?

4182 Mr. Maguire: Same objection.

The Court: Sustained as to form.

Q. Did they state their names? A. No.

Mr. Maguire: Objected to.

The Court: Well, he says "no," so I won't pass on that objection; it came after the answer.

Q. Did they identify themselves apart from their names?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did they ask to show them anything? A. Yes.
Q. What did they ask you to show them?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did you show them anything? A. No.
Q. Did any of those persons ask you for any money?

4184

Mr. Maguire: Objected to.
The Court: Sustained. Did you give any money to anybody?
The Witness: No.

Q. Did you have any conversation with those persons about giving them money? A. Yes.
Q. Was anything said in that conversation about the amount of money they wanted?

Mr. Maguire: Objected to.

A. Yes.
Q. Was an amount mentioned?

4185

The Court: One moment.
Mr. Ennis: I am sorry.
The Court: When counsel rises to make an objection, I have to pass on it. Please don't put another question until I dispose of it. Strike out the last question. Read the previous question and the objection.

(Previous question and objection read.)
The Court: Overruled.
Mr. Maguire: I respectfully except.

Q. Something was said? A. Yes.
Q. What amount was mentioned?

Mr. Maguire: Objected to.
The Court: I will allow that.
Mr. Maguire: Exception.

A. What amount?
Q. Was mentioned, yes. A. $9.42.
4187 Q. Did some of those men mention that amount? A. Yes, sir.
Q. What did they say about that amount?

Mr. Maguire: Objected to.
The Court: I will sustain the objection as to form.

Q. What was said?

Mr. Maguire: Objected to.
The Court: Sustained. Can you describe the person who mentioned the amount $9.42?
The Witness: No, I couldn't remember.
The Court: Was it a man or a woman?
4188 The Witness: A man.

By the Court.

Q. Is that all you can remember about it? A. That is all.
Q. Do you know whether he had a beard? A. No, he didn't.

By Mr. Ennis.

Q. One of this group of men? A. Yes.
Q. Mentioned that amount? A. Yes.
Q. Did he ask you to pay him that amount?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did the other men stay there while you unloaded? A. No.
Q. They left before you finished? A. That is right.

The Court: Were those men there when you began to unload? 4190
The Witness: Yes.
The Court: Did any of them say anything at the time you began to unload?
The Witness: What like? You mean attempt to unload the truck?
The Court: Yes.
The Witness: No.

Q. They talked to you? A. That is right.
Q. How were those men dressed?

Mr. Maguire: Objected to as immaterial.
The Court: I will allow that.

4191

Q. How were they dressed, if you remember? A. In working clothes.
Q. Did they ask you whether or not you were a union man?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did you have a conversation wtih them? A. Yes.
Q. Will you state what that conversation was?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did you ask any of those men to show you anything?

Mr. Maguire: Objected to.
The Court: Didn't we have that before?
Mr. Ennis: I didn't think so, your Honor.
The Court: I will overrule the objection.
Mr. Maguire: I respectfully except.
4193 The Court: He may answer yes or no.

A. Yes.
Q. You did? A. Yes.

The Court: Did they show you anything?
The Witness: They didn't show me anything.

Q. What did you ask them to show you?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Was there anything said at that time about a union number?
4194

Mr. Maguire: Objected to.
The Court: Sustained as leading and suggestive.

Q. Up to the time of that conversation, Mr. Newell, about how many loads of merchandise a week did you bring to New York City? A. One to five.

By the Court.

Q. How many had you brought to the Taylor Chemical Company in the Bronx before this occasion? A. Repeat that, please.

The Court: The stenographer will repeat the question.

Q. (Read.) A. The Royal Chemical.

Q. The Royal Chemical Company. A. Several loads.

Q. How long had you made a delivery prior to this occasion that you are speaking about? A. About two weeks. 4196

Q. Had you ever seen any of these persons on that occasion? A. Not before.

Q. Or any prior occasion? A. Not before that.

By Mr. Ennis.

Q. After that conversation and after you went home on this occasion, when did you next bring a load to New York City? A. About two months later.

The Court: Did you ever bring a load again to the Royal Chemical Company in the Bronx?

The Witness: Not for about two months later.

The Court: Did you see any of the persons on that occasion? 4197

The Witness: No.

The Court: That later occasion, whom you saw on the occasion you have just been interrogated about?

The Witness: No.

Q. Did your employer give you loads to bring to New York City shortly after that occasion? A. I was offered the loads.

Q. How long after that conversation? A. A week or so after, but I wouldn't bring it.

Mr. Murray: May I move to strike it out, if your Honor please?

The Court: Strike it out.

Mr. Murray: And I move to strike the answer out as immaterial and irrelevant.

The Court: Strike it out. Strike out "I wouldn't bring it."

Q. Did you bring that load which was offered to you?

4199 Mr. Murray: I object, if your Honor please.

The Court: I will let him say whether he did or not.

A. No, I didn't.

Q. Now, going back to that conversation, Mr. Newell, with that group of four or five men at the Royal Chemical: Did any of those men state what they were?

Mr. Murray: I object to it as already answered.

Mr. Maguire: I object.

The Court: Sustained.

Mr. Ennis: If the Court please, may the examination of this witness be suspended until after the recess? We would like to make an offer of proof 4200 at that time.

The Court: Well, have you nothing more you want to ask him about?

Mr. Ennis: I have nothing more but that conversation.

The Court: All right.

Mr. Murray: If your Honor pleases, at this time I move to strike out the testimony of the witness on

the ground that it is irrelevant and throws no light on the issues here.

The Court: Denied without prejudice to renewal.

Mr. Murray: May I inquire if this witness is to be recalled?

The Court: The testimony of this witness is being suspended. He will still be under examination until he is excused.

Mr. Murray: Will your Honor direct that no one talk to him until he finishes his examination?

The Court: I will.

Mr. Murray: Thank you. 4202

The Court: You are not to talk to anybody between now and the time you resume the witness stand unless you do so with the permission of the Court. Next witness.

EDWARD WARREN, of 117 West Broad Street, Millville, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Warren, where are you employed? A. John Palmer, Millville. 4203

Q. What business is that? A. Trucking.

Q. How long have you been employed by Palmer? A. Close on to six years.

Q. Where does Palmer haul from? A. From Millville, New Jersey.

Q. To where? A. New York, Baltimore, Philadelphia.

Q. Do you know how far it is from Millville to New York? A. About 124 miles.

Q. Are you a member of any labor union? A. Yes, sir.
Q. What union? A. 509, A. F. of L.
Q. In Vineland? A. That is right.

The Court: Did you say 509 or 590?
The Witness: 590.
The Court: 590?
The Witness: Yes.

Q. How long have you been a member of Local 590? A. 1936.
Q. In 1937 did you haul merchandise between Millville and New York City? A. Yes, sir.
4205 Q. Was there any particular type merchandise that you hauled more than others? A. No. Most of it is all glass.
Q. Did you haul to any consignees more than others? A. What is that?
Q. Do you understand the question? A. No, I don't.

The Court: Where did you make your deliveries in New York?
The Witness: Up on the British-American, 24th Street and West Avenue.

Q. British-American what? A. Distillery Company.
Q. Did you carry empty bottles? A. That is right.
Q. Did you make deliveries to any other place in New
4206 York? A. Yes, sir.
Q. What others? A. To Monarch Wine.

The Court: Monarch?
The Witness: Monarch.
The Court: Where are they?
The Witness: They are on Wooster Street, New York City. Whitehall & Tatum: Armstrong Cork now.

Q. What was it when you made the deliveries? A. Whitehall & Tatum.

Q. Can you recall any others? A. Well, we went to piers; different piers in New York.

The Court: Where was Whitehall & Tatum's place?

The Witness: Varick Street.

Q. Do you remember whether you went to Park & Tilford? A. Yes, sir.

The Court: Where was Park & Tilford? Where was their place of delivery? 4208

The Witness: I just forget the address now.

Q. Do you remember the street? A. No, I don't remember the street name.

Q. Now, in the early part of 1937, say, in January or February, did you unload the truck yourself? A. Yes, we did.

Q. Did you ever have a helper on the truck? A. Yes, sir.

Q. From Millville? A. From Millville.

Q. When you had a load, for example, for the British-American Distillery who unloaded the trucks there? A. The platform men there.

Q. Did they always unload? A. Always. 4209

Q. Did you have a helper when you had a load for the British-American Distillery? A. Yes, we brought a helper from Millville with us.

Q. Do you remember a load you brought to the British-American Distillery in about February or March, 1937? A. Yes, sir.

Q. Tell us what happened when you pulled up to the platform. A. When I pulled up there some local men

here came around and told me I had to have a City man to unload the truck.

Q. How many were there? A. Three of them. So I told them, I says, "We don't even unload"——

Mr. Maguire: I object.

The Court: Sustained.

Q. Did you see anything on the persons of any of these men? A. In what way? What do you mean?

Q. Did you see anything on their clothing? A. A union button.

4211 Q. Where was that? A. Well, one of them had—one had it on his hat. The others had them on their jackets.

Q. What did you see on the union button? A. "807."

The Court: Had you ever seen any one of those men before?

The Witness: No, I didn't.

The Court: Have you ever seen any of them since?

The Witness: No.

Q. Would you recognize any of those men if you saw them today? A. I don't believe I would.

Q. Well, do you want to stand up and tell us if you see any of those men in this court room? A. No, I don't.

4212 Q. What conversation did you have with the men?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. All right?

Q. Yes, you may answer. A. Why, they came up and told me that I had to have a man to unload, and I asked

them what they meant by it. He said, "Well, it is a new rule now. You have to have a City man for over forty-five miles run to unload your truck." I said, "Well, we never did before." I said, "We don't even unload it ourselves." He said, "We have to cover the truck anyway and it is going to cost you $9.42 to have it unloaded." So we were talking. So he told me I would have to call the boss up and get the money. So I called up and the boss said, "Well"——

Mr. Maguire: I object.

The Court: Never mind what the boss said. Did you talk to him? 4214

The Witness: Yes.

The Court: What did you do after that?

The Witness: I hung up again, and they let the platform men go ahead and unload the truck. Then I had to call up again, and I called up about three times altogether, and they made me wait there until the check got there before they let me out of New York.

Q. Did they touch anything on your truck? A. Nothing.

Mr. Marks: May I have this marked?

The Court: Yes.

(Marked Government's Exhibit 47 for Identification.) 4215

Q. I show you Government's Exhibit 47 for Identification and ask you if you have ever seen that paper before. A. Yes, I have.

Q. Did you see it on that day which you have been telling us about? A. I seen it when the boy brought it in, the telegram boy.

4216

Q. Where were you when he gave it to you? A. In the union office.

Q. When did you go to the union office that day? A. After we were unloaded.

Q. Whom did you go there with? A. With one of the fellows that stopped me and told me I had to have $9.42.

Mr. Marks: If your Honor please, it is now twelve minutes to twelve.

The Court: All right, we will take a recess.

(Short recess.)

4217

(The following took place in chambers):

The Court: All right, Mr. Ennis.

Mr. Ennis: The Government offers to prove by the witness Fowser acts after the filing of the indictment and in September and October of 1938 by a defendant, George Needelmann, with respect to whom the Government feels there has been ample other proof connecting him with the case, just as in the case of the witness Perry the Government offered to prove acts subsequent to the filing of the indictment with respect to the defendant Edward Weinheimer, with whom the witness Perry testified he had had dealings just before the date of the filing of the indictment.

4218

On this question the Government takes the position that without evidence bringing in all of the defendants, such evidence of subsequent acts should be allowed in with respect to particular defendants against whom there has been other evidence and particularly so if the witness testifies to relations with that particular defendant during the period prior to the filing of the indictment, on the theory that subsequent similar conduct between the same

parties involving just a continuous course of conduct is adinissible certainly on the question of intent.

The Court: Now as to Perry, when you had Perry on the witness stand, less than half of the defendants had been identified, and I call that to your attention. Since that time several more have been identified, but there are several defendants yet as to whom no proof whatever has been offered to connect them with this case. Now do you intend to offer proof as to those defendants?

Mr. Ennis: We expect to offer proof as to all of the defendants on trial, but pending a subsequent decision as to the conduct of our case——

The Court: What is the reason you can't offer that 4220
proof before you offer proof of circumstances subsequent to the date of the indictment?

Mr. Cahill: Judge, it is not quite that, as I see it. We feel that, on behalf of the Government, it breaks up the continuity of our proof as to a particular defendant where you have to leave him and then come back to him.

The Court: I know that is your attitude, but I am looking at it from the standpoint that proof may be introduced here with respect to acts that occurred in September and October of 1938 and perhaps even as late as 1939.

Mr. Cahill: True.

The Court: That might have a very particular bearing upon those defendants not yet identified.

Mr. Cahill: Oh, no. We make the statement to the 4221
Court that we don't intend in these offers of proof subsequent to the indictment to offer any evidence that has anything to do with any defendant not heretofore identified.

The Court: Well, I am going to think that over myself.

Mr. Cahill: Not heretofore identified by the witnesses who have testified.

The Court: I know you have a right to put your case before the Court in the way you think it ought to be presented, but the responsibility for the proper conduct of this trial as far as the defendants being assured of a fair trial is concerned is up to me, and it is also up to me to see that the jury are properly guided to a reasonable consideration of the facts and a fair determination of the issue. Now, what about the other fellow?

Mr. Ennis: The Government offers to prove by the witness Newell that the group of four or five men whom he talked to at the Royal Chemical Company in the Bronx stated to him that they were Local 807 men and threatened
4223 him with bodily harm if his employer did not hire them for his New York unloading. The Government's position is that the circumstances surrounding the incidents which have been already elicited in the witness' testimony make it sufficiently clear that those persons were 807 men to permit their statement to that effect on the threats——

The Court: Well, in the first place, this is an isolated circumstance. This fellow had been up there before and he never saw any of these particular men; he was up there later and he never saw them, and the proof is overwhelming in this case that in instance after instance where drivers had been approached by persons who have demanded that they put on City men or have demanded the right to unload or who have demanded the right to load
4224 and have demanded the right to be paid, that they had 807 buttons or that they exhibited some indicia to show that they were 807 men. Now in this particular instance the witness says they didn't have any buttons on and he says that he asked them to show something and they didn't show anything, and that is so contrary to all the circumstances connected with other occasions upon which proof has been offered that I don't feel that the Court has a right to assume in an isolated situation of this character without any connecting inference whatever that it would

be proper to let this testimony in and I think that it would be highly prejudicial, and I am going to exclude it.

Mr. Ennis: If the Court please, the Government offers to prove that when the witness asked them to show their 807 book they said or they refused, and asked him for his book and he said he wouldn't show his book if they didn't show theirs.

The Court: I would let that testimony in if there was anything to hang it on but there isn't.

Mr. Ennis: I also point out that this witness is employed by the previous witness Fowser, who did testify to his trucks being stopped and going up to the union hall.

4226

The Court: That is all right.

Mr. Ennis: And having a conversation about a contract.

The Court: That is all right. That does not justify the situation such as you complained existed here.

Mr. Ennis: In addition, the witness Newell has testified that the amount demanded was $9.42, which on the evidence was the peculiar amount usually demanded.

The Court: Well, if I knew that they were paying $9.42 or demanding $9.42 and I went up somewhere where nobody had gone before and took a gang of fellows up there and demanded $9.42 and didn't wear any button and refused to show any card and there was nothing connecting me with the men who had been paid the sum in other parts of the City, would you say that I was connected with the defendants?

4227

Mr. Ennis: I will say, your Honor, with all this foundation laid that it was sufficiently probable that the Court—

The Court: Well, now——

Mr. Ennis: That the Court did protect the defendants by letting it in.

The Court: You see this thing from your angle as the prosecutor. I don't know what the views of the defendants' attorneys are and it isn't necessary for them to say,

but I am sure they don't agree with you. I am looking at this thing without any passion or prejudice one way or the other. It doesn't mean anything to me. I am just trying to determine when it is proper to let testimony in and when it is proper to keep it out. Now I will rule it out. No, there have been a number of instances here where perhaps the defendants' attorneys thought it had been on the border line if not over the border line, but I haven't agreed with them and I have let it in, this morning, too, as well as on other previous occasions. But I think here you haven't got up to the border.

Mr. Ennis: I would like to enlarge on what I said the
4229 offer of proof was to say that this witness would testify that these people threatened to knock his brains out and as a result of that he wouldn't bring loads back here to New York City.

The Court: Well, he did bring them back.

Mr. Ennis: Yes, that is true; several months later.

The Court: If these fellows threatened to bang his brains out, you are doing here by indirection what you couldn't do by direction, to prosecute them, because you didn't know who any of them were.

I am going to deny the application as far as the witness Newell is concerned, and in so far as the witness Fowser is concerned I say now it is not the time.

(The following proceedings took place in the court
4230 room):

(The clerk called the roll of defendants and all were present.)

The Court: We will recess at twenty-five minutes after twelve until half-past one instead of from one to two.

EDWARD WARREN resumed the stand.

Direct examination (continued) by Mr. Marks.

Q. Now, that was the union hall we were talking about? A. That is right.

The Court: Where was it?

The Witness: I believe it was on Hudson Street.

The Court: Near where?

The Witness: Right near the tunnel there.

Q. Was there any conversation with any one of these three men about going to the union hall before you went up there? A. One of them suggested that the other take me up—— 4232

Mr. Maguire: Objected to.

The Court: Strike out the answer. Just answer yes or no.

Q. Yes or no? A. Yes.

Q. What was the conversation?

Mr. Maguire: Objection.

The Court: Which one of the men did you have the conversation with?

The Witness: A tall fellow.

The Court: Which one was it with respect to the man to whom the $9.42 was paid? 4233

The Witness: Well, he is the one I went in the hall with. It was a tall man that told him to take me up there.

Q. What was said about going up there?

Mr. Maguire: Objection.

The Court: I will allow it.

Mr. Maguire: Exception.

A. He told me to go up there and see if the check was there before I could get out of New York.

Q. What did you say to him about the check? A. I told him he said he would send it up and it would be there. I said, "Why don't you let me go?" He was afraid the check wouldn't arrive. So he told me I would have to wait until it got there.

Q. Then you went up to the union hall together? A. We went up to the union hall.

Q. Did the check arrive? A. About twenty minutes later.

Q. I believe you said it was handed to you in the union
4235 hall? A. It was handed to the man in the office there.

Q. What was said when the check arrived? A. Well, instead of being made out to the man who was supposed to get it, it was made out to the union itself.

Q. Yes? A. So the fellow says, "Well, it will be all right. I will get the money again." He said, "You can go ahead." When I seen the check it was made out to the union.

Q. Did you then leave? A. I left then.

Q. What time was that? A. It was late in the afternoon.

Q. How much time had elapsed between the time your truck was unloaded and the time you left? A. Well, I was up there for about an hour. I was down to a diner about an hour. Then we were up in the union office about
4236 twenty minutes.

Q. Shortly after that did you begin to have a regular City man on your truck? A. It wasn't long after that.

The Court: Where was your truck when you went to the office?

The Witness: On Hudson Street.

The Court: In other words, you drove it down there?

The Witness: That is right.

Q. Did anybody accompany you on the truck? A. One of the union men, yes.

Q. Stayed with you all the time? A. Yes.

Mr. Marks: I offer Government's Exhibit 47 for Identification in evidence.

The Court: Show it to counsel.

(Mr. Marks hands to defense counsel.)

Mr. Maguire: Objected to as incompetent and not binding on these defendants.

The Court: Well, is your objection based on the fact that it has not been shown who made the check out?

4238

Mr. Murray: Yes, your Honor, and, further, there is no evidence of who received it.

The Court: Sustained.

Mr. Marks: It was received by this witness, your Honor, pursuant to a call.

The Court: I know. I heard the testimony. You don't have to remind me of it.

By Mr. Marks.

Q. Whom did you telephone before you received this paper, Government's Exhibit 47 for Identification?

The Court: Incidentally, it has been referred to as a check, and I am not sure that that is the proper characterization of it.

4239

Mr. Marks: That was the witness' term, your Honor.

The Court: All right.

A. Morris Cavanaugh.

Q. Morris Cavanaugh? A. That is right.

Q. Who is Cavanaugh? A. He is our boss; foreman of Palmer's Trucking.

The Court: Where was he when you telephoned to him?

The Witness: In the office in Millville.

Q. And where were you when you received this paper? A. Up in the union office.

The Court: Who brought it there?

The Witness: Telegram boy.

4241 Q. Whom did he give it to? A. He gave it to the man behind the cage up there.

Q. Did anybody give it to you? A. No; he didn't hand it to me.

Q. Did you see it? A. Yes, I seen it when he opened it.

Q. And when the man behind the cage opened it, did he say anything to you? A. No, he didn't say nothing to me. He said——

By the Court.

Q. Did he say anything in your presence? A. Yes, he did.

Q. All right, what did you hear him say? A. He said,
4242 "This is made out to the union," he says; "you won't be able to get it cashed." So he said to me, "You can go ahead and go now; I will get the money."

By Mr. Marks.

Q. Who said that? A. The fellow that was supposed to get that check.

Q. Yes? A. So I don't know whether they got it cashed or not.

Q. Did you see this paper yourself? A. Yes.

The Court: Of course he did.
Mr. Marks: I renew the offer.
The Court: Now let me look at it.
(Paper handed to Court.)
The Court: I will sustain the objection.

Q. After this conversation at the union hall did you begin to have a regular man on your truck in New York City? A. It wasn't long after that.

Q. Can you tell us about how long after? A. I couldn't tell you exact, no.

Q. Was it a matter of weeks? A. No, it was longer than that. 4244

Q. Who was the man whom you began to have? A. John Gaughan.

Q. Do you see him in this court room? A. Yes.

Q. Will you point him out? A. He is over there (indicating).

Q. Which row? A. With the glasses, back row.

Mr. Marks: I see only one man with glasses in the back row, your Honor. May the clerk call the defendant's name, John Gaughan, and ask him to stand up?
The Court: Yes.
The Clerk: John Gaughan, please rise. 4245
(A man stood.)

Q. Is that the man? A. That is him.

Q. After Gaughan became your City man, did you meet any other persons when you drove your truck into New York City in 1937? A. Yes.

Q. Where? A. Oh, on West Street, Canal Street; fellow pulled up alongside of me and asked me if I had a union man.

Mr. Maguire: I object to that.

The Court: Read the answer.

(Answer read.)

The Court: Strike out beginning with the words "fellow pulled up" as not responsive.

Q. Would you be driving a truck or would you be parked on those occasions? A. Driving.

Q. And what did you see? A. Beg pardon? The car?

Q. Automobile? A. Yes.

Q. How many men were in it? A. Sometimes there would be only one, may be two, three or four in it.

4247 Q. And what did the automobile do?

Mr. Maguire: Objected to.

The Court: What did the automobile do?

Q. What did you see it do? A. Follow me.

Mr. Maguire: Objected to.

The Court: I will allow him to say that.

Mr. Maguire: Exception.

Q. Where did it follow you to? A. To the places I was going to deliver.

Q. And what did you see the men in the automobile do there?

4248 Mr. Maguire: Objected to.

By the Court.

Q. Did you ever see any of these men before who were in that automobile? A. No, I did not.

Q. Did you ever see them subsequently? A. No, I have not.

Q. Did you have any talk with them? A. No.

Q. Did you observe anything on their person? A. No, I have not.

Q. When did this occurrence take place that you are now referring to? A. Different times.

Q. Well, was it after the occasion when you went to the union office? A. It was after, yes, sir.

Q. How long after? A. Oh, when John Gaughan came to work for us.

Q. Was it before John Gaughan came to work or was it after he came to work? A. After.

Q. After he came to work? A. Yes.

4250

The Court: Now read the question.

(Mr. Mark's last question read.)

The Court: I will allow that.

Mr. Maguire: Exception.

The Witness: When they would see John Gaughan they would just drive right along; they would not bother.

Mr. Maguire: I move that the latter part be stricken out.

The Court: Strike it out. The question is what they did, not what they did not do.

By Mr. Marks.

Q. Did they follow you to the warehouses? A. Yes, sir. 4251

Q. Now, how long did they stay at the warehouse where your truck pulled up? A. They would not stay. They would just see Gaughan come over to the truck and they would go right on instead of stopping.

Mr. Marks: That is all.

Mr. Murray: I think your Honor has fixed this as the time to suspend.

The Court: Yes. We will recess now until 1.30.

(Recess to 1.30 P. M.)

AFTERNOON SESSION, 1.30 P. M.

(The roll of the defendants was called.)

4253 Mr. Marks: If your Honor please, Mr. Maguire informs me that some of the Government's prospective witnesses are in the court room. May the clerk make an announcement and ask that all witnesses leave the court room?

The Court: Are there any persons in the court room who anticipate being called as witnesses in this case? If so, will they please rise?

(No one rises.)

If there is anyone here who expects to be a witness, the Court will ask him to retire and present himself or herself in the witness room and remain there until called in the regular order.

The roll call shows all present. Proceed.

4254 Mr. Ennis: If the Court please, the witness Warren does not seem to be in the witness room. Might we proceed with the witness whose testimony was suspended?

The Court: Yes.

Mr. Marks: All right, Mr. Warren is here.

EDWARD WARREN resumed the stand; further testified as follows:

Cross-examination by Mr. Murray.

Q. Mr. Warren, are you able to give us an identification of anyone that spoke to you on any occasion in relation to employing someone other than yourself on your truck? A. At any time when I came up here?

Q. Yes. A. I don't know the name of the fellow, but if he is in here I can pick him up.

Q. Well, was that before or after June 1, 1938? A. Well, it was.

Q. After? A. Yes. 4256

Q. Are you able to identify anyone that spoke to you before June 1, 1938? A. I don't believe so.

Q. Did you ever look at any book that any of those men you talked to claimed was a union book? A. No, I never looked at their books.

Q. Did you on any of those occasions or conversations that you have testified to ask the name of any of those men? A. No, I did not.

Q. Did you ever make any effort to ascertain the names of any of those men that spoke to you on any occasions? A. I did not.

Q. And aside from seeing a button on the clothing of the men that spoke to you, you don't know whether or not, do you, of your own personal knowledge that they were connected with Local 807? A. No, I do not. 4257

Mr. Murray: That is all.

The Court: Any redirect?

Mr. Marks: No redirect.

The Court: Excused. Next witness.

(Witness excused.)

Mr. Ennis: Mr. Fowser.

4258 *Earl Fowser—For Government—Recalled.*
Clinton B. Newell—For Government—Cross.

EARL FOWSER resumed the stand.

The Court: Who examines?

Mr. Ennis: Did you understand, Mr. Murray, that we had no more direct examination with this witness?

Mr. Murray: If your Honor please, I have no cross-examination beyond moving to strike out the witness's testimony as irrelevant to the issues in this indictment.

The Court: Denied.

4259 Mr. Murray: Exception.

The Court: Witness excused.

(Witness excused.)

Mr. Ennis: Shall I call the next witness, your Honor?

The Court: Yes.

Mr. Ennis: Mr. Newell.

CLINTON B. NEWELL, recalled, further testified as follows:

Mr. Ennis: No further direct examination.

The Court: Cross-examine.

4260 *Cross-examination by Mr. Murray.*

Q. Mr. Newell, is it true that you are unable to identify anyone that talked with you on the occasions that you testified to? A. Yes.

Q. And with the man that you talked to you never saw what is called a union book? A. No.

Q. You never saw what is called a union button? A. No.

4261

Q. And the only means of identification you have is that on one occasion a man said he belonged to Local 807? A. That is right.

Mr. Murray: That is all.

If your Honor please, I renew the motion to strike out the testimony of the witness on the ground that it bears no relevancy to the issues in this indictment.

The Court: Denied.

Mr. Murray: Exception.

Mr. Ennis: No further examination for the Government.

4262

The Court: Excused. Next witness.

(Witness excused.)

Mr. Marks: I will call Mr. Palmer.

JOHN PALMER, residing at 807 Wheaten Avenue, Millville, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Palmer, what is your business? A. Trucking business.

Q. And what is the name? A. J. Palmer.

4263

Q. Are you the owner? A. Yes, sir.

Q. How long have you been in business? A. Since 1923.

Q. Between what points do you haul? A. From Millville to Baltimore, New York, Philadelphia, Brooklyn; a 200-mile radius from Millville, New Jersey.

Q. In the early part of 1937 did you haul any particular type of commodity more than others? A. Why, nothing more than glassware.

Q. And you hauled glassware to New York City? A. Yes.

Q. To what warehouses in particular? A. Well, we will say, for instance, 225 Varick Street.

Q. What is that? A. That was Whitall Tatum's warehouse.

Q. What others? A. Park & Tilford; Fidelio Brewery, several wine houses here in New York as well.

Q. Were all of your drivers members of a union? A. Yes.

Q. In the spring of 1937? A. Yes, sir.

Q. What union? A. 590.

4265 Q. And that is Vineland? A. Vineland, New Jersey.

Q. When you sent a truck to New York City did you send a helper on the truck or not? A. At that time, yes.

Q. Now, do you recollect whether you received any telephone calls from New York in the early part of 1937? A. We got several telephone calls.

Q. Do you remember approximately what month? A. Well, I would say it was prior to the time when I signed the contract here in New York.

Q. Do you know when you signed the contract? A. I don't know the exact date.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

4266 (Marked Government's Exhibit 48 for Identification.)

Q. I show you Government's Exhibit 48 for Identification. Will you look at that and see if that refreshes your memory as to when you signed the contract? A. The 14th day of April, 1937.

Q. Can you tell us now about when you received these telephone calls from New York City? A. Well, I will say three or four weeks prior to the time I signed this contract.

Q. And after you received such calls did you make any payments of money? A. I believe we have, yes.

Q. Now, do you remember coming to New York City shortly before or at about the time you signed that paper which you have before you? A. Yes.

Q. Whom did you see in New York City? A. Well, I hired a man here in New York, by the way.

Q. Whom did you see on that trip? A. I saw this man I hired.

Q. What is his name? A. Gaughan.

Q. Do you see him here in court? Will you stand up and look around? A. (Standing) In the back there (indicating).

Q. Where? A. The young fellow with glasses. 4268

The Court: Which row?

The Witness: In the back row, second one from the left.

Mr. Marks: May the clerk call the name of John Gaughan.

The Clerk: John Gaughan.

(A man stood up.)

Q. Is that the man who is now standing? A. Yes, sir.

Q. Where did you meet Gaughan? A. At Novick's Transfer.

Q. Did you have a conversation with him there? Nothing other than I made arrangements with him to go to work for me. 4269

Q. What did you say and what did he say? A. I asked him would he go to work for me and of course he said yes.

Q. Was there anything else said at that time? A. At so much per week.

Q. How much? A. At that time I give him $35 a week.

Q. Was anything else said? A. Not to my knowledge, no.

Q. Did you go anywhere else after you saw Gaughan? A. I believe I went to the union hall after I saw Gaughan.

Q. Where is that? A. That is right as you come out of the tubes there; I don't know exactly what street it is.

Q. Out of what tubes? A. The Holland Tubes.

Q. Whom did you see there? A. Campbell, William Campbell.

Q. Do you see him in the court room? Will you stand up and look around? A. (Standing) No, I don't see him.

Q. Take your time and look around. A. Yes. In the back there, second row.

4271

Q. What seat? A. Fourth from the left.

Q. Is it the fourth chair or fourth man? A. The fourth man from the left.

Q. In what chair is he sitting? A. The fourth chair.

Q. Well, I am not sure which man you are starting from. A. From the left.

Q. You see, there is one man sitting on a bench. A. Yes, sir.

Q. Then next to him is a man— A. It is the fourth man from the man sitting on the bench.

Mr. Marks: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

4272

(A man stood up.)

Q. Is that the man who is now standing? A. Yes, sir.

Q. Did you have a talk with him at union headquarters? A. Well, nothing other than in regard to signing——

Q. Well, did you have a talk with him? A. Well, I believe I discussed it, about signing the contract.

Q. What was the conversation? A. Well, it was either I signed up or I just couldn't pull into New York City; that is all.

Q. Who said that?

Mr. Maguire: I move to strike it out.
The Court: Strike it out.

Q. Tell us what he said and what you said, Mr. Palmer. A. I told him I couldn't afford to pay this $9.41 or $9.42, whatever it was at that time. He said, "That is too bad. That is your hard luck. See, we have them here in New York. We have to keep going as well. We are looking after these men here in New York."

Q. What else did he say? A. "It is either sign up or you can't pull in."

Q. Did you sign up? A. I signed up. 4274

Q. At that time? A. Yes, sir.

Q. Is that your signature on Government's Exhibit 48 for Identification (indicating)? A. Yes.

Q. Is that the paper you signed at that time? A. Yes, sir.

Mr. Marks: I offer it in evidence.
The Court: Show it to counsel.
(Mr. Marks hands paper to counsel.)

(Government's Exhibit 48 for Identification received in evidence.)

Mr. Marks: This bears the date, ladies and gentlemen, April 14, 1937, and purports to be an agreement entered into between Palmer Trucking Company and Local 807, signed for the firm of Palmer Trucking Company by John J. Palmer, for Local 807, William Campbell. 4275

Q. After you signed that paper who worked on your truck? A. Gaughan. John Gaughan.

Q. At what rate did you pay Gaughan? A. Well, at that particular time I only had, we will say, one or two trucks

a day here in New York, and again there were days I wouldn't have anything in here. So I paid him $35 a week whether he done anything or not—whether he worked or not.

Q. Were most of your loads straight loads or miscellaneous loads? A. 90 per cent straight loads.

Q. How long did it take to unload a straight load? A. Of course I was never here, Mr. Marks, but I judge about an hour or an hour and a half to unload each load.

Q. Now, did you continue to pay Gaughan at a weekly rate up to June 1, 1938? A. I pay him $45 a week now.

Q. No, that is not the question.

4277

The Court: Strike out the answer.

Q. Did you continue to pay Gaughan at a weekly rate—A. Yes.

Q. From the time you signed the paper up to June 1, 1938? A. Yes.

Q. Every week? A. Yes.

Q. Can you tell us specifically, Mr. Palmer, whether you paid Gaughan for the week which included November 30, 1937? A. Yes, sir.

Q. Can you also tell us specifically whether you paid Gaughan for the week which included January 15, 1938? A. Yes, sir.

4278

Mr. Marks: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Mr. Palmer, before you signed the contract with the union you employed Mr. Gaughan, did you not? A. Yes, sir.

Q. And Mr. Gaughan was not recommended to you by anyone connected with the union, was he? A. No, sir.

Q. You came over to New York, did you not, and saw Mr. Paul Novick of the Novick Transfer Company? A. Yes.

Q. And you asked Novick, did you not, to recommend a man to you? A. That is right.

Q. That was entirely independent of any connection you had with the union? A. Yes, sir.

Q. Then Mr. Novick recommended Mr. Gaughan, is that right? A. Yes.

Q. Then Gaughan went to work for you? A. Yes, sir.

Q. When you first hired him you paid him $35 a week, did you not? A. Yes. I had little to do at that time.

Q. And the arrangement was for the $35 a week he was to work 8 hours a day if the work was there for him to 4280
do, is that correct? A. Yes, sir.

Q. Now, when you signed the contract with the union on April 14th and up to June 1 of 1938 you still continued to pay him $35 a week, is that correct? A. Up to this particular date?

Q. Up to June 1, 1938. A. I believe so, yes.

Q. You had no disagreement with Mr. Gaughan at all, did you? A. No.

Q. He did his work as he was required? A. Yes, sir.

Q. And you paid him? A. Yes.

Q. And that is all there was to it? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, when you employed Mr. Gaughan through the introduction of Mr. Novick did you know whether or not 4281
Gaughan at that time was a member of the union? A. I didn't question him on that. I don't know.

Q. But is it true that you voluntarily went to the union rooms about the signing of this contract?

Mr. Cahill: Objected to as to form.

The Court: Overruled.

A. Well, I didn't really want to go there.

4282 *John Palmer—For Government—Cross.*

Q. Well, had Gaughan talked to you about going there? A. No, he didn't force me to go there.

Q. He didn't say anything about it at all? A. No, but I was getting these different telephone calls.

Q. Had you ever been in communication with Mr. Campbell before you went to the union rooms? A. No.

Q. You never had any talk with him at all? A. No, sir.

Q. As far as you knew up to that time you went to the union rooms and saw Mr. Campbell, Mr. Campbell didn't exist, did he? A. No, not as far as I am concerned.

Q. Now, did you go to the union rooms to talk to someone about a contract? A. I really went in and asked for Campbell.

4283

Q. Did you? A. Yes.

Q. And Campbell chanced to be there? A. Well, he wasn't there at that time, but the gentleman that was there told me he would be back shortly.

Q. So when Campbell came back you signed a contract? A. That is right.

Q. Did you sign it there or did you take it home and mail it in? A. I signed it there.

Mr. Murray: That is all.

The Court: Any redirect?

Mr. Ennis: No redirect.

The Court: Witness excused.

Next witness.

4284

MAX SNOWHITE, residing at 216 Hampton Street, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your occupation, Mr. Snowhite? A. Trucker.

Q. Were you engaged in that business in 1937? A. Yes, sir.

Q. What was the name of your company at that time? A. Snowhite & Gerson.

Q. Where was your business located? A. South Avenue, Bridgeton, New Jersey.

Q. Did you truck merchandise to New York City? A. 4286
Yes, sir.

Q. What kind of merchandise? A. Mostly glass bottles.

Q. To what consignees in New York City did you bring such merchandise? A. Hercules, British-American, piers. Whitall Tatum warehouse.

Q. Were your drivers at that time members of any union? A. Yes, they was.

Q. What union? A. 590, Vineland.

Q. Will you speak up so the jury can hear you? A. No. 590 in Vineland, A. F. of L.

Q. On the average how long would it take your men to unload a load of glass? A. Around an hour.

Q. At the beginning of 1937 who unloaded your shipments of glass in New York City? A. Our drivers and 4287
helpers.

Q. Your drivers and helpers? A. Yes, sir.

Q. Did a time come when other persons unloaded your merchandise in New York City? A. Well, they held us up—

Mr. Maguire: No, I move to strike it out.

The Court: No. Did a time come when you did not unload?

The Witness: When we did not unload? A. Yes.

Q. When?

The Court: When was it?

A. Around July, I think, of 1937; June or July, I don't remember now.

Q. In July, or beginning with July and thereafter did persons other than your drivers and their helpers unload your merchandise? A. Yes.

Q. Do you know who any of those persons are? A. Yes; there is a fellow by the name of Gaughan.

Q. What is his name? A. Gaughan.

Q. You know him? A. Yes.

4289 Q. Will you stand up and look around this court room and tell the Court and jury if you see that man Gaughan? A. (Standing) There are so many of them here.

Q. Take your time and look around. A. The fellow over there (indicating).

The Court: Which row?

The Witness: The second, I think.

The Court: And how many from the end?

The Witness: The first one from the end.

The Court: Do you want to step down so you may see better?

The Witness: Yes.

The Court: You may do that.

4290 Q. You can walk around and look. A. (Leaving stand.) Over there (indicating).

By the Court.

Q. Now, you are pointing to a man sitting in what row? A. Last row.

Q. And how many seats from the end of that row, the left end, your left end of that row? A. The second row.

Mr. Ennis: May the clerk call the name of John Gaughan?

The Court: Yes.

The Clerk: John Gaughan.

(A man stood.)

By Mr. Ennis.

Q. Is that the man? A. Yes.

Q. Will you return to the witness stand, please? A. Yes (returning to stand).

Q. Where did your first see that man? A. At Hercules.

Q. When? A. In June and then on November 30th.

Q. Of 1937? A. Yes. 4292

Q. On that occasion, on November 30th in 1937, did you have any conversation with John Gaughan about unloading your truck? A. Yes.

Q. What was that conversation? A. That he would charge us $5 a load and unload our trucks.

Q. What did you say? A. All right. We was satisfied.

Q. Did you pay him any money on that occasion? A. At that day I gave him $9.20 we owed him before and we kept on paying him $5 after that every load he unloaded.

Q. How much did you give him on that occasion? A. $9.42.

Q. How did you pay him, in cash or by check? A. Cash, and I drew the check to my account.

Q. You drew a check to your account? A. Yes. 4293

Mr. Ennis: I request this paper to be marked Government's Exhibit for Identification.

(Marked Government's Exhibit 49 for Identification.)

Q. Mr. Snowhite, I show you Government's Exhibit 49 for Identification. Do you recognize that paper? A. Yes, sir.

Q. Is that the check you drew——

The Court: No. Is that the paper you signed?

Q. Is that the paper you signed? A. On the back, yes.

Q. Is that your signature on the back? A. Yes—in the front.

Q. Is this your signature on the front of it? A. Yes; and this is Gerson's (indicating).

Q. Is this your partner's signature? A. Yes, sir.

Q. Is that the check you signed with respect to that cash payment?

4295 Mr. Boudin: I thought your Honor ruled out that form of question.

The Court: Yes. We designated something a little while ago as a check and it was not a check. It is better not to designate papers until they are in evidence. I don't know. I have not seen it, and I do not know what it is, but it is a paper. If it goes in evidence the jury and the Court will know what it is; but until then it should not be described by any descriptive term other than a general one.

Q. Is that the paper you signed upon the occasion of paying $9.42 to the defendant John Gaughan? A. That is right.

4296 The Court: Now, how much money was mentioned there in that question?

(Question read.)

The Court: My recollection is that in the testimony he stated he paid $9.20.

Q. Do you recall how much cash you paid to John Gaughan on that occasion? A. $9.42.

Q. $9.42? A. Yes, sir.

Mr. Ennis: I offer this paper in evidence.
Mr. Maguire: Objected to as incompetent.
The Court: I would like to see it.
(Paper handed to the Court.)
The Court: Proceed.
Mr. Maguire: Exception.

(Government's Exhibit 49 for Identification received in evidence.)

Mr. Ennis: (to the jury) This paper, dated November 30, 1937, states "Pay to the order of Max Snowhite, $9.42," and then it is signed "Max Snowhite" and "B. J. Gerson," and it is endorsed on the back, the witness testified, with his signature, and it also states on it "New York union man for unloading." 4298

Q. Mr. Snowhite, do you recall making other payments to the defendant John Gaughan? A. Well, I could not recall dates, but there are several payments made.

Q. Do you recall making payments subsequent to the payment you have testified about? A. Yes.

Mr. Ennis: I request that this be marked as a Government exhibit for identification.

(Marked Government's Exhibit 50 for Identification.) 4299

Q. I request you to examine Government's Exhibit 50 for Identification. Does this bear your signature? A. Yes, sir.

Q. It does? A. Yes, sir.

Q. Will you examine that exhibit? Does that refresh your recollection as to the time of any other payments you made to John Gaughan? A. This?

Q. As to the time of any other payments? A. Well, I can't recollect what dates, but we have several checks in Bridgeton that we paid.

Q. You have several checks that you paid to Gaughan? A. Yes.

Q. And you don't recall the particular time of any of the payments? A. No, because they have all the records. Mr. Gerson has got the records in the office, and when I dissolved I left them all there. I mean when we——

By the Court.

4301 Q. Well, does this paper that counsel just showed you bear your signature? A. Yes.

Q. Did you present that to anybody after it was signed? A. No. We mailed it to Gaughan. This was mailed.

Q. You put it in the mail? A. Yes.

The Court: All right.

By Mr. Ennis.

Q. Well, can you state when you put that in the mail? A. No.

Q. You don't remember when you mailed that particular check? A. No.

Q. Do you recall whether you paid Gaughan every week for any period? A. No, I can't recall. It might be that 4302 we paid him for a week and then we did not work for two more weeks and commenced paying him again.

By the Court.

Q. Well, did you pay him cash more than once? A. Only once. While I was here I paid him cash.

Q. On other occasions did you give him a check? A. We sent him checks.

By Mr. Ennis.

Q. Mr. Snowhite, will you look at that check again or that paper and will you state whether that refreshes your recollection as to any particular payment you made to the defendant John Gaughan? Does it refresh your recollection as to the time of any particular payment? A. No.

Q. That does not refresh your recollection? A. No.

Q. As to the time of any payment? A. Mailed it to him on the 15th, that is all I know.

Q. You mailed it to him on the 15th? A. Yes.

Q. 15th of what? A. Of January.

Q. What year? A. 1937.

Q. Will you look at that exhibit again, Mr. Snowhite? 4304
A. 1938, I beg your pardon.

Q. You mailed it on January 15, 1938? A. Yes.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. Mr. Snowhite, did you do trucking for Mr. Palmer? A. Yes.

Q. And what did you truck for Mr. Palmer? A. Glass bottles.

Q. And did your trucks go to Palmer's terminal in New York? A. No.

Q. Did they ever go to Palmer's terminal? A. I didn't know Palmer had a terminal here. 4305

Q. You didn't know that? A. No.

Q. Well, did you know that Gaughan was employed by Mr. Palmer at $35 a week? A. I didn't know what he was getting at that time. I know he was employed by him.

Q. Did you know that on some days Mr. Palmer's trucks did not come into New York? A. Well, there are several times.

Q. Yes. And the occasions when you paid Mr. Gaughan were the times when Mr. Palmer's trucks were not in New York; isn't that so? A. No, the times when his trucks was there and ours was there the same time.

Q. Well, didn't you make an arrangement with Gaughan that if he could not work on your trucks that someone else would? A. He would get somebody.

Q. That he would get someone for you, is that right? A. Yes.

Q. And then if he got someone for you, instead of sending a check to the man who worked on the truck, you would send it to Gaughan to pay that man, wouldn't you? A. No; we would send it direct.

4307

Q. Well, did you ever have a man named McMahon working on your truck? A. Yes.

Q. Did you ever send a check to Gaughan to pay McMahon? A. I don't remember. After we made arrangements with McMahon we sent McMahon the checks direct.

Q. Well, weren't there occasions when your trucks came in and Gaughan did not work your trucks, but it was worked by some other Local 807 man? A. Yes.

Q. And did you ask Gaughan to recommend a Local 807 man to you?

Mr. Ennis: May the time be fixed, your Honor?

Mr. Murray: Well, I understand that the District Attorney has fixed it between June, 1937, up

4308

to June, 1938, and I am inquiring——

The Court: Proceed. We are now on cross-examination, and the United States Attorney has a right to redirect when you get through.

Mr. Murray: May I have the question repeated, if your Honor please?

The Court: Yes.

Q. (Read.) A. No.

The Court: There need not be any date fixed for that.

Q. Did you ever talk to Gaughan between June, 1937, and June, 1938? A. June, 1937——

Q. And June, 1938, about Gaughan recommending an 807 man to work your truck? A. (No answer.)

The Court: Do you understand the question?

The Witness: He asked me——

The Court: Listen to the question. The stenographer will repeat it. 4310

Q. (Read.) A. No.

Q. What is your answer? A. No.

The Court: The answer is no.

Q. Now, how many times between June of 1937 and June of 1938, did you ever pay Gaughan any money, whether by cash or check? A. Well, the only one that I—November 30th, when I was here in New York, I gave him $9.42.

Q. That was November 30, 1937, was it? A. I think it was.

Q. Was it? A. I think so.

Q. Well, when is the next time that you ever paid him? 4311
A. The next time was when we mailed the checks after that.

Q. Well, how often did you mail checks? A. Well, I haven't the records with me. I don't remember.

Q. Well, have you got any idea? A. Well, I see there is one there on the 15th, January 15, 1938.

Q. And that is for how much? A. $6, I guess.

Q. Well, do you remember any time else that you have sent checks to Gaughan? A. I know there were. The dates I don't remember.

Q. Well, do you remember how often after November, 1937? A. Quite a good many times.

Q. Well, have you any idea how many times? A. No, I have no idea until we get all the checks together.

Q. Now, have you got your record of canceled checks? A. No, I haven't.

Q. Between November of 1937 and up to June 1, 1938? A. I haven't with me, no.

Q. Now, you have a check which is marked Exhibit 49
4313 as of November 30, 1937, for $9.42, isn't that right? A. That is right.

Q. Well, you notice that it has your endorsement, that appears on this check? A. That is right.

Q. Did you hand this check to Gaughan personally? A. No, I didn't; I gave him cash.

Q. You gave him cash for this check? A. No, I gave him cash and I told the bookkeeper to make out a check to my account.

Q. You say your recollection is refreshed by looking at Exhibit 50 for Identification, the paper that bears date of January 15, 1938, for $6.80. Now, have you got any other memorandum of payments that you have made to Gaughan? A. Well, if we have it is in the office. I haven't them with me.

4314 Q. Where did you find— A. These here was brought the last time I testified.

Q. Where did you find Exhibit 49, the check dated November 30, 1937? A. That was here with the records we left here last year or the year before last when I testified.

Q. Well, is your present recollection that you only had two checks? A. No. We had more than that.

Q. Did you bring more than that to court here to New York? A. I don't remember.

Q. Well, have you saved all your— A. I expect that they are in the office. If there is any given out, they must be there. We called up last night and we couldn't get them down here in time.

Q. Do you know what happened to those other checks that you say were made payable to Gaughan or which represented payments made to you? A. They must be in the office there. I haven't got them with me.

Mr. Murray: That is all.

The Court: Any further questions?

4316

Redirect examination by Mr. Ennis.

Q. Mr. Snowhite, do you now have control of those records which Mr. Murray asked you about? Are they in your possession? A. No.

Q. In whose possession are they? A. In Gerson's.

Q. Has your partnership with Gerson been dissolved? A. Yes.

Q. When was it dissolved? A. 1939.

Q. 1939? A. Yes.

Q. When in 1939? A. May 23rd.

Q. Your partner has the records? A. He has the records.

Mr. Ennis: That is all.

4317

Recross-examination by Mr. Murray.

Q. Well, do you know what your partner Gerson did with the records? A. I can't say. We called him up last night and couldn't get them down here in time.

Mr. Murray: That is all.

The Court: Witness excused. Next witness.

(Witness excused.)

THEODORE J. WILLIAMS, of R. D. 2, Millville, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Williams, where are you employed? A. John J. Palmer, Millville, New Jersey.

Q. Are you an over-the-road driver? A. Yes, sir.

Q. Are you a member of any union? A. Member of 590.

Q. In Vineland? A. Yes, sir.

Q. How long have you been a member of Local 590? A. Close on to three years.

4319 Q. When did you go to work for Mr. Palmer? A. I went to work for Mr. Palmer in 1937.

Q. Do you remember whether you joined the union at about that time? A. Yes, sir.

Q. Did you haul merchandise into New York City? A. Yes, sir.

Q. What is the distance between Millville and New York? A. Between Millville and New York is 127 miles.

Q. What is the general running time between the two cities? A. Why, I make it in four and one-half hours.

Q. What did you haul principally? A. I hauled all kinds of bottles. Medicine bottles, beer bottles, liquor bottles.

Q. Did you haul principally straight loads or miscel-
4320 laneous loads? A. The biggest majority of our loads are straight loads.

Q. Going to any particular warehouse? A. Warehouses, distilleries.

Q. Will you name some of them? A. Park & Tilford, Pier 22, Brooklyn, Roma Wine.

Q. Can you remember any others? A. We have quite a few in Jersey. Colgate's. Quite a good many of them. Fidelio Brewery, Brooklyn.

Q. Approximately how long did it take to unload one f these straight loads? A. Well, if you get good breaks on the platforms, about an hour and a half to two hours at the most.

Q. Did you haul anything back to Jersey as a rule? A. No, sir.

Q. When you first went to work for Palmer do you remember whether you unloaded yourself at the warehouse? A. We never unloaded by ourselves. We always had a man there in New York to help us unload.

Q. Who was the man when you first went to work for Palmer? A. Gaughan.

Q. Do you see him in this court room? Will you stand up and look around. A. (Standing) The man right back there in the last row with glasses on. 4322

Mr. Marks: May the clerk call the name of John Gaughan.

The Clerk: John Gaughan.

(A man stood up.)

Q. Is that the man? A. Yes, sir.

Q. Where did you usually meet Gaughan? A. We generally always met Gaughan at the warehouse, 225 Varick Street, New York City.

Q. What warehouse is that? A. Whitall Tatum.

Q. Can you remember any other occasions in 1937 when you met anybody else in that vicinity other than Gaughan? A. Well, no, only Thomas McMahon. 4323

Q. How did you come into New York City? A. Through the Tubes.

Q. Holland Tunnel? A. Yes, sir.

Q. Did you meet or see anybody as you came out of the tunnel on any occasion? A. Well, about——

Mr. Maguire: I object to that, if your Honor please.

The Court: Answer yes or no.

A. Yes.

The Court: Fix the time.

Q. When? A. Three months after the—about—yes, about three months before the contract was signed.

Q. Do you know, of your own knowledge, when the contract was signed? A. No, I do not.

Q. But it was about three months before that? A. Yes, 4325 sir.

Q. What year? A. 1937.

The Court: What part of the year?

The Witness: Around February. It was cold weather.

Q. What did you see as you came out of the tunnel? A. Well, I had to pull up for the red light before I made the turn to the left. Waiting on the red light I had a man jump on the running board on me there. I don't know who this man was.

Q. Did you see anything on his person? A. No, I didn't.

Q. Go ahead. A. The only thing he had on his cap——

Mr. Maguire: I object to any statement.

4326 The Court: I will allow the witness to answer.

Mr. Maguire: Exception.

The Witness: He had a cap on which was pulled down over his eyes, down over his forehead, like. I couldn't get to see his forehead. He asked me where I was going and I told him——

Mr. Maguire: I object to the conversation.

The Court: Strike that out.

Q. Did this man show you anything? A. No, sir, he did not.

Q. Did you see anything on his clothing? A. No, I did not.

Q. Did he say who he was? A. He didn't say who he was at all.

Q. Did you see him again after that? A. No, I never seen—I don't think it was the same person. It happened to me once after that.

Q. I mean that very same day. Did you see that man later? A. Oh, he followed me to 225 Varick Street.

Q. Did you see him there? A. I seen him in a car with several other men.

4328

Q. Now, the first time you saw him was when he jumped on the running board? A. Yes, that is right.

Q. On the running board of your truck? A. Yes, that is right.

Q. What did he do? A. Just asked me where I was going.

Q. No. What did he do? A. He grabbed the steering wheel of my truck. I had the window up part way and when he grabbed the steering wheel I was practically stopped. So I put my hand out against his chest. I told him, "Don't pull off anything like that on my equipment."

Mr. Maguire: I object to the conversation.

The Court: Strike it out.

4329

Q. Did he get off? A. So we went down to the corner and waited on the green light, and he seen a policeman on the corner and he jumped off. That was the last I seen him at that time.

Q. When you pulled up to the warehouse you then saw a car? A. I then saw a car with four men in it.

Q. Where was the car when you first saw it? A. The car was at the corner of—I don't know the name of the street, but right where we make the turn for 225 Varick Street.

The Court: Was this person you spoke of one of the four men in the car?

The Witness: Yes, sir. I seen him get in the car.

The Court: Where?

The Witness: As we turned the corner on Varick Street.

Q. How far is the warehouse from the tunnel? A. Well, it is about eight blocks.

Q. Did any of the four men come out of the car? A. No, they didn't.

Q. They all remained? A. They all remained in the car.

4331

The Court: Had you ever seen any of those men before?

The Witness: No, sir, I hadn't.

Q. Have you seen any of them since? A. No, sir, I haven't.

Q. Would you recognize any of these men if you saw them to-day? A. Well, I wouldn't say yes and I wouldn't say no, because on account of the cap situation.

Q. Well, will you stand up and look around the court room and tell us if you see here any of these men? A. (Standing) No, there isn't any there.

Q. When you saw them in the car did you see anything on the persons of any of them? A. No, I didn't. I didn't pay that much attention to them because I was waiting on Mr. Gaughan at that time.

4332

Q. Did Mr. Gaughan appear? A. Yes, sir, he did.

Q. What did you see the men in the car do then? A. Well, after Gaughan got in the truck I turned the wheel over to him and we started out and they disappeared.

Q. Do you remember any other occasion when you met anyone or saw anyone as you came out of the Holland

Tunnel? A. Yes, on another occasion where I had them come up and ask me where I was going and I said to them——

Mr. Maguire: I object to the conversation.

The Court: Yes.

Mr. Maguire: And move to strike it out.

Q. When was this? A. That was a week later.

Q. Whom did you see? A. Well, there was four, I believe; three or four in the car, and one hollered out the window, "Where are you going?"

Mr. Maguire: I object to the statement. 4334

Q. Don't tell us what he said, Mr. Williams. Did they speak to you? A. They hollered at me, yes.

Q. Were they all in the car when you saw them? A. Yes, sir.

Q. Did they remain in the car? A. Yes, sir.

Q. Did you see that car again that day? A. I seen that car back at Park & Tilford's that same day.

Q. Where is the warehouse of Park & Tilford's? A. 24th, just right on 24th Street, right off West Avenue.

Q. West Street you mean? A. Yes.

Q. Did you see Gaughan there? A. I had Gaughan with me at the time.

Q. Was Gaughan with you when you came out of the tunnel? A. No, he wasn't with me at the tunnel. I met him at the warehouse, 225 Varick Street, and when we got to 24th Street, why, this car was right behind us. 4335

Q. What did the car do when you arrived at the warehouse? A. When we arrived at Park & Tilford's the car was right at the corner and he watched to see who was with me. I don't believe they knowed that our City man was with us.

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out.

Q. Did Gaughan get out at Park & Tilford's? A. Yes.

Q. At that point what did you see the car do? A. I laid down on the seat then. I didn't pay no attention to the car at that time. I left everything to Gaughan at that time.

Q. Did you see the car again after that? A. No, I didn't.

Q. Have you seen any other automobiles on any other occasions that you drove into the City? A. On one occa-

4337 sion I have; at British-American.

Q. The British-American Distillers? A. Well, no, I don't think it is a distillery. It is a customer we have on the eighth floor of the British-American. The platform men did the unloading there.

Q. When was this occasion that you are now talking about? A. That was this winter. We have to have our City man with us at that place.

Mr. Maguire: May I move that it be stricken out? I think it already appears from the statement of the witness that it happened subsequent to May 31st.

The Court: Strike it out.

4338 Q. Did you see any other automobiles in the vicinity of your truck in New York City up to June 1, 1938? A. No, I have not.

Mr. Marks: That is all.

Mr. Murray: If your Honor please, I move to strike out the testimony of the witness on the ground that it is irrelevant and not pertinent to the issues in this indictment.

The Court: Denied.

Mr. Murray: Exception.

4339

Cross-examination by Mr. Murray.

Q. You don't know any of the men you saw on the occasions that you have talked about, do you? A. I don't know any men by name in New York City outside of our own City man.

Q. You didn't know those men? A. No, I did not.

Q. Now, Gaughan worked with you on your truck, didn't he? A. That is right.

Q. He worked with you up to at least June of 1938, didn't he? A. Yes. Up to this date he did.

Q. He drives your truck for you on occasions, doesn't he? A. That is right.

4340

Q. Sometimes when you come in you take a sleep while he unloads? A. That is right.

Q. And drives for you? A. That is right.

Mr. Murray: That is all.

Mr. Ennis: No further redirect.

The Court: Witness excused. Next witness.

HARRY T. TREMBLEY, of 5 Morton Street, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

4341

Direct examination by Mr. Marks.

Q. Mr. Trembley, where are you employed now? A. Sam Wilson.

Q. Is that a trucking company? A. Yes, sir.

Q. Where were you employed in 1937? A. For Snowhite & Gerson.

Q. Did you drive a truck for them? A. Yes, sir.

Q. From Bridgeton to New York? A. Yes, sir.

Q. Were you a member of any labor union? A. Yes, sir.

Q. What union? A. 590.

Q. When did you join? A. In 1934.

Q. You were in good standing in 1937? A. Yes, sir.

Q. Now, what type commodity did you haul for Snowhite & Gerson? A. Glass bottles.

Q. Where to? A. Park & Tilford Distillery, to British-American Distillery.

Q. Do you remember any others? A. Roma Wine.

The Court: Roma?

4343 The Witness: Roma Wine, yes. There is one in Brooklyn. Hercules Distillery in Brooklyn.

Q. Did you say when you went to work for them? In what part of 1937? A. I didn't.

Q. What time was it? A. It was around November, 1937.

Q. And when you first went to work for Snowhite & Gerson was there anybody in New York City whom you met regularly? A. No, sir.

Q. Did you unload your own truck at the time? A. Yes, sir.

Q. Did you have a helper with you? A. Yes, sir.

Q. Did you and your helper both unload? A. Yes, sir.

Q. How long did it take to unload your truck on the
4344 average? A. One hour.

Q. Do you remember whether at the British-American Distillers you and your helper unloaded? A. The helper used to help unload the truck at that time.

Q. I say, do you remember particularly at the British-American Distillers who did the unloading? A. Just the men on the platform.

Q. Did there come a time when somebody else unloaded or assisted in unloading your truck? A. Yes. There was

a time where somebody insisted on unloading my truck there.

Q. When was that? A. That was in 1937, too.

The Court: Well, how long after you went to work for Snowhite & Gerson was it? Or was it before that?

The Witness: About three months after I went to work for Snowhite & Gerson.

The Court: You went to work for them when?

The Witness: In November.

The Court: All right. When do you say it was that somebody else assisted in unloading your truck? 4346

The Witness: January.

The Court: They hadn't done that before?

The Witness: January.

The Court: January of what?

The Witness: That would be 1938.

Q. And where was that? A. British-American.

Q. Tell us what happened when you drove your truck up there. A. When I drove my truck up there I used to back into the platform so I wouldn't be blocked up during the rush in the morning, and I waited there, and there was a car pulled up there with two men. They asked me if I had a union——

Q. Excuse me. Did the car pull up after your truck backed in? A. That is right. 4347

Q. Yes? A. And they asked me if I had a union man—

Mr. Maguire: Objected to.

The Court: Yes.

Q. Do you know who those two men were? A. No.

The Court: Did you ever see them before?
The Witness: No.
The Court: Did you ever see them after?
The Witness: No, sir.

Q. Did they show you anything? A. No, sir.
Q. Did you see anything on their persons? A. No, sir.
Q. Or on their clothing? A. No, sir.
Q. Did they say who they were?

Mr. Maguire: Objected to.
The Court: Sustained. Did either one of them unload your truck?

4349

The Witness: No, sir.
The Court: Did you pay any money to anybody?
The Witness: No, sir.

Q. Did anybody else come on the scene a little later? A. Yes, sir.
Q. Who? A. Mr. Gaughan.
Q. Do you see him in court? Will you stand up and look around? A. (Standing) I don't seem to see him.
Q. Take your time.

The Court: You may step down.

A. (Witness steps down from stand and walks around room.) No, I can't see him.

4350

Q. Take your time and walk around and look. A. (After walking around room) Yes, I see him now.
Q. Where is he? A. In the back here in the corner.
Q. Which row? A. Last row.
Q. In which seat? A. Second seat in.

Mr. Marks: May the clerk call the name of John Gaughan?

The Clerk: John Gaughan.
(A man stood up.)

Q. Is that the man standing up? A. Yes, sir.

Q. Did you see those two men in conversation with Gaughan? A. No, sir, I did not.

Q. Did you see them together with Gaughan? A. I would not say I did.

Q. Were they still there when Gaughan arrived? A. Yes.

Q. Where were they when Gaughan arrived? A. Sitting in their car alongside of my truck.

Q. And when did they leave? A. Well, I would say about ten minutes after Gaughan got there. 4352

Q. Now, about how long had they been there when Gaughan arrived? A. Three-quarters of an hour.

Q. Can you remember about what time it was when he did arrive? A. About a quarter after seven.

Q. In the morning? A. Yes, sir.

Q. Did you have a conversation with those men before he did arrive? A. Not after I had talked to him about having a union man——

Mr. Maguire: I object to the conversation.

The Court: Strike out the answer. The question is one that requires a yes or no answer.

The Witness: Yes, sir.

Q. What was the conversation? 4353

Mr. Maguire: Objected to.

The Court: Sustained.

A. Just that they asked me——

Mr. Marks: No, no.

The Court: No.

Q. Did those men at any time show you anything before they left?

Mr. Maguire: Objected to as having already been answered.

The Court: Overruled.

Q. Did you hear the question, Mr. Trembley? A. Yes, sir. I think I asked them if they had a union book.

Q. Did they? A. And one of them showed me a book.

Q. Did you look at the book? A. Yes, sir.

Q. What did you see on it? A. That it was an 807 book.

4355 Q. Now, will you tell us what conversation you had with those men when you first saw them?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. Well, just as I asked them if they had a book, they says they was going to wait for Mr. Gaughan to come; and that is all I said to them, and I went back to the truck.

Q. Is that all they said to you? A. Well, I asked them—

Q. No, is that all they said to you? A. They asked me if I had a union man.

By the Court.

4356 Q. What did you say to them? A. When I got there I didn't say nothing; they came to me.

Q. No, when they asked you if you had a union man, what did you say? A. I said yes.

Q. Did you tell them who it was? A. Yes, sir.

Q. Who did you say it was? A. Mr. Gaughan.

Q. Then they told you they were going to wait until he came? A. That is right.

Q. And he came? A. Yes.

Q. And after that they left? A. Yes.

Q. Now, have you told us all the conversation you had with them? A. Yes, sir.

Q. All right. Now, when Mr. Gaughan came there, what did he do? A. He went on the platform with my bills to deliver the load.

Q. Did he unload or assist in unloading the merchandise you had on your truck? A. Yes, sir.

By Mr. Marks.

Q. Do you remember an occasion around the same time when you drove a truckload of merchandise to British- 4358
American Distilleries? A. Yes, sir.

Q. Do you know anyone named Charlie Wessler? A. Yes, sir.

Q. Who is he? A. He is the fellow from Jersey City. He is another 807 man. He lives in Jersey City.

Q. Did you see anybody on the occasion that you drove this particular truckload to British-American Distilleries? A. Yes, sir. There were four or five other fellows there that day.

Q. Did any of them show you anything? A. No, sir.

Q. Did you see anything on their persons? A. One of them had a union button on his coat.

Q. Did you see what union it was? A. No; there is no number on them kind of buttons that you wear on your 4359
coat. It is just an emblem that you wear all the time, Sundays and all.

Q. Do you know what emblem it was? A. Yes, sir.

Q. What emblem was it? A. American Federation of Labor.

Q. Do you know whether the unions in the American Federation of Labor have the same emblem? A. Yes, sir.

Q. Did you see anything on the persons on any of the other men? A. No, sir.

Q. Now, did you have a conversation with any of those four men? A. No, sir.

Q. No words were exchanged? A. Just with Wessler, that is all.

Q. Just with what? A. Just with Wessler.

Q. Did the four men arrive before Wessler did? A. That I couldn't say.

Q. Do you remember what time Wessler did arrive? A. About half past eight.

Q. Were the men there when he arrived? A. Yes.

Q. How long before he got there did they arrive? A. Well, that I couldn't say either. It was after he came
4361 to the truck, to me, because I was sleeping in the cab when he woke me up.

Q. When you saw the men, were they in a car? A. I couldn't say.

Q. After Wessler arrived, did you have any conversation with him? A. Just that he asked me for the bills.

Q. Did you have any conversation with the other men? A. No, sir.

Q. What did you see them do when Wessler arrived? A. Well, Wessler went in to take the bills in to the receiving clerk first, and then he came out and he stood by my truck, and I says, "Ain't they going to start unloading?" And he says, "Yes, right away." Then he got in the cab, and he sat down with me, and we were sitting there talking, and I said, "Are they unloading my truck?" And he
4362 says, "Yes——"

Mr. Maguire: I object to the conversation.

The Court: Overruled.

Mr. Maguire: Exception.

A. (Continued) —"there is another man on your truck." So I asked isn't he going to unload the truck, so

he says, "No, the other fellow is going to unload." Now, who this other fellow was I don't know.

The Court: Well, did the other man unload it?
The Witness: Yes, sir.

Q. Have you told us the entire conversation? A. Yes, sir.

Q. Do you remember another occasion, Mr. Trembley, when you had a load for—is that Roma or Romer? A. Roma Wines.

Q. Roma Wines? A. Yes, sir.

Q. Do you remember when that was? A. It was in November, I think; around November some time. 4364

Q. In what year? A. 1938.

Q. About how long after this last conversation that you just told us about was this one? A. All of six or eight months.

Q. What was your load at that time?

Mr. Maguire: Objected to.

A. Bottles.

The Court: I will allow it.
Mr. Maguire: Exception.

Q. Was Gaughan at the Roma Wines when you got there? A. No, sir. 4365

Q. Now, did you make a telephone call at that time? A. Yes, sir.

Q. Where did you call? A. 807, the local.

Q. And do you know whom you spoke to? A. No, sir.

Q. Did you have a conversation with anyone there? A. Yes.

Q. What was the conversation?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. How long did you wait after the telephone call? A. About one hour.

Q. Did anybody make an appearance? A. No, sir.

Q. What did you do then? A. The receiving clerk had to have the bottles and he told me to come ahead and unload.

Q. Did you? A. Yes, sir.

Q. Do you remember, Mr. Trembley, after you finished working on your truck whether you sometimes drove Gaughan some place? A. On West Street.

4367

Q. Did you leave him off there? A. Yes, sir.

Q. Can you remember having a conversation with him at about the time he left your truck? A. Yes, sir.

Q. When? A. As we was going down to West Street.

By the Court.

Q. No. When was it? What time? A. Well, I couldn't say just offhand the time.

Q. What year was it? A. Well, this was in 1938.

Q. Well, what part of 1938; the first part or the last part? A. Well, the first part.

Q. Before the 1st of June? A. Yes, it was before the 1st of June.

4368

By Mr. Marks.

Q. What did Gaughan say as he left? A. He just says he was going over to Novick Transfer and that if we ever wanted them in the afternoon, why, we should call him there if we got in late; that he would be there at the platform there waiting.

Q. Did he say anything else? A. No. He said he might get more trucks there coming in.

Q. He might what? A. He might get more trucks there coming in.

Q. Is that all he said? A. Yes, sir.

Q. Did he say trucks of what companies? A. No, sir.

Mr. Marks: That is all.

The Court: Well, we will recess at this point.

(Short recess.)

(The roll of the defendants was called and all were present.)

Cross-examination by Mr. Murray.

Q. Mr. Trembley, Mr. Gaughan worked with you occa- 4370
sionally, didn't he? A. Yes, sir.

Q. Not all the time? A. Yes.

Q. And this Mr. Wessler that you speak about meeting on one occasion at the British-American Distillery—he is not one of those defendants here, is he? A. No, sir.

Q. Now, you said you don't know any of the men that spoke to you on those two occasions? A. No, sir, I do not.

Q. Don't you know who they were? A. No, sir.

Q. Or what their business was? A. No, sir.

Mr. Murray: I move to strike out the testimony of this witness, if your Honor please, on the ground that it is not relevant to the issues.

The Court: Denied.

Mr. Murray: Exception. 4371

The Court: Any redirect?

Mr. Marks: No redirect.

(Witness excused.)

ROLAND G. CARMAN, residing at 197 Bank Street, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What was your occupation at the beginning of 1937, Mr. Carman? A. Truck driver.

Q. For whom? A. Jack Zohlman.

Q. What was the name of his business? A. E. Pritchard, Inc., hauled canned goods.

Q. Between what points did he haul canned goods? A. Between Bridgeton and New York City.

4373

Mr. Murray: Your Honor, may I have repeated the name of the concern that the witness was connected with?

The Court: Yes.

(Answer referred to read.)

The Court: They were canners?

The Witness: That is right.

Q. Did you haul canned goods to New York City? A. I did.

Q. At the beginning of 1937 who unloaded those goods in New York City? A. I and my helper.

Q. Did you always bring a helper with you? A. Yes, sir, most of the time.

4374

Q. Did you haul those goods to different consignees or to a few consignees? A. Well, mostly to a warehouse, Spring and Washington Street.

Q. Is that the Pritchard warehouse there? A. Yes, that is right.

Q. Did any occasion occur in 1937 upon which you did not unload your own merchandise? A. Yes, sir.

Q. When was that? A. It was in, if I recall rightly, it was in the spring of 1937.

Q. Who unloaded the merchandise? A. A man by the name of James Murphy.

Q. Will you stand and look around this room and tell the Court and jury if you see that man here? A. (Standing) Yes, I see him.

Q. Where is he?

The Court: Which row?

The Witness: Back row, second from the corner.

Q. Second from the left end? A. That is right.

Q. The last row? A. That is right.

Mr. Ennis: May the clerk call the name of 4376
James Murphy?

The Court: Yes.

The Clerk: James Murphy.

(A man stood.)

Q. Is that the man? A. That is the man.

Q. Where did you first see him? A. At E. Pritchard's warehouse.

Q. Was there anyone with him on the first occasion? A. No.

The Court: When was it?

The Witness: It was in the spring of 1937.

Q. Did you have a conversation with him? A. I did.

Q. What was said? A. He told me to tell my boss that 4377
he would have to pay to get unloaded. He said he would let me go this time, but from then on he would have to be paid, to get unloaded.

Q. What did you say to that? A. I said I would tell him.

Q. Did you say anything else? A. Not that I recall.

Q. Did you pay him any money that day? A. Not then, no, sir.

Q. Did he ask for any particular sum of money? A. He said it would be $9.42.

Q. When did you next see him? A. Within less than a week.

Q. Where? A. At the same place, E. Pritchard.

Q. Did you have a conversation with him? A. I did.

Q. What was said? A. He wanted to know if I had the money to unload.

Q. What did you say? A. I had it and gave it to him.

Q. Did you have any talk about it? A. I started to unload the truck, and he would not help, and I got into an argument with him about that, and he said he didn't
4379 have to.

Q. What else did he say? A. He said he was there to see that nobody bothered me.

Q. What else did you say? A. I don't think I said any more. I went on and unloaded the truck myself.

Q. Did he give you any help at all in unloading the truck on that occasion? A. Not any; not for about two or three weeks.

Q. Did you pay him money on that occasion? A. Two or three different times.

Q. How much did you pay him each time? A. $9.42.

Q. Now, in addition to that occasion how many other occasions were there during those three weeks you mentioned in which you paid him money and he did no work? A. Well, there was another driver—most of the time two
4380 trucks came here—I would bring the money sometimes here or the other driver would. But I would say in those two or three weeks probably two or three times.

Q. How many times did you pay him? A. That is what I say; about two or three times.

Q. Did you pay him? A. That I paid him myself.

Q. In addition to the conversation about his not working to which you have referred, did you have any further conversations on that subject? A. No, I believe not.

Q. You did not talk again with him at any time about his not working? A. Well, only I kept referring to him all the time that I was getting paid $7.50 a trip and he was getting $9.42, and I was doing the work and he was standing there watching me.

Q. What did he say to that? A. He said he didn't have to do it.

Q. Did he say anything else? A. Not that I can remember.

Mr. Ennis: That is all.

Mr. Boudin: If your Honor please, I move to strike out the testimony of this witness on the ground that it has no relation to the crime charged in the indictment or either of the indictments. 4382

The Court: Denied.

Mr. Boudin: Exception.

Cross-examination by Mr. Murray.

Q. When was it that you first met Murphy? A. In the spring of 1937.

Q. Can you do any better for us than that on the date? A. No, I don't believe I can.

Q. What is your conception of the spring of 1937? A. Well, in April, May, along in there.

Q. Do you say it was April or May? A. I would say it was around that. 4383

Q. Now, in April or May you met Murphy for the first time, is that right? A. That is right.

Q. And you had a conversation with him? A. That is right.

Q. Now, what did he say? A. He told me to say to my boss that he would have to pay to get the truck unloaded.

Q. That is about all he said at that time, is that right? A. That is right.

Q. So you came back a week later? A. Within a week.

Q. You had seen your boss? A. That is right.

Q. You had a talk with your boss? A. That is right.

Q. And a week later did you employ Murphy? A. That is right.

Q. How long did Murphy work with you? A. Clear on up until about, until I left the truck—I would say about a year and a half ago.

Q. How long all-told did Murphy work with you? A. It was over a year.

4385 Mr. Murray: That is all.

Mr. Ennis: No redirect.

The Court: Witness excused. Next witness.

SHELDON CARLL, of 249 Bank Street, Bridgeton, New Jersey, called as a witness for the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Carll, by whom were you employed in the early part of 1937? A. John Zohlman.

Q. When did you go to work for Zohlman? A. I would say 1935.

4386 Q. Did you drive a truck for him at that time? A. Yes, sir.

Q. Between what points did you haul? A. Bridgeton and New York was the main run.

Q. How far is Bridgeton from New York? A. About 130 miles.

Q. And about how long did it take you on an average to drive from Bridgeton to New York? A. Well, if you left early in the morning, about five hours.

Q. Did you usually leave early in the morning? A. Yes, sir.

Q. What type commodity did you haul? A. Tomato products, catsup.

Q. Canned goods? A. Canned goods.

Q. Did you haul principally to any particular warehouse in New York City? A. To E. Pritchard's warehouse.

Q. Where was that located? A. Spring and Washington.

Q. Were most of your loads solid loads? A. The majority of them were, yes. 90 per cent, I would say.

Q. How long did it take you to unload a solid load? A. At the warehouse?

Q. Yes. A. About an hour. 4388

Q. Do you know about how many trucks a day Zohlman had on an average in New York City in 1937? A. Not over two.

Q. In the early part of 1937 did you unload your own truck? A. Yes, sir.

Q. Did you get any assistance? A. No, except what the company furnished.

Q. Well, did the company furnish any? A. At the warehouse they give you a hand, yes, sir.

Q. Did there come a time in 1937 when someone else assisted you in unloading? A. Yes, sir.

Q. When was that? A. The early spring, I would say, of 1937.

Q. Do you remember the first occasion when you had a 4389
conversation about unloading? A. Well, the first conversation I had, I was unloading one day and three men came on the truck and said I would have to discontinue.

Mr. Maguire: I move that it be stricken out.

The Court: Yes, strike it out.

By the Court.

Q. You were unloading one day and three men came there. Did you know any of them? A. No, sir.

Q. Did you ever see them before? A. No, sir.

Q. Have you ever seen them since? A. Once after that, yes, sir.

Q. Where? A. The same location.

Q. Was there anyone with them at that time? A. Three fellows together.

Q. Just three? A. Yes.

Q. Do you see anyone here now whom you recognize as one of those three? A. No, sir.

4391 Q. Would you know any one of the three if you saw him now? A. I doubt it. It has been three years ago.

By Mr. Marks.

Q. On either of these two occasions when you saw the three men did any of them show you anything? A. They showed me a union button.

Q. Did you look at it? A. Yes, sir.

Q. What did you see on it? A. "807."

Q. Now, the first time you met them was, you say, at the warehouse? A. Yes, sir.

Q. Had you started to unload when you first saw them? A. Yes, sir.

4392 Q. How much of a load had you gotten off when you saw the men for the first time? A. Three-quarters of it.

Q. How did they approach you? In an automobile or on foot? A. Well, I couldn't tell you. I was inside the body and the first thing I knew the three men were in there.

Q. What was said by each of them and by you?

Mr. Maguire: Objection.

The Court: I will allow that.

Mr. Maguire: Exception.

A. They came in and said I would have to stop unloading and I couldn't unload any more goods in New York myself; it had to be a New York union man to unload the load and that I would have to start getting in touch with my boss and have him come right up.

Q. Have what? A. I would have to get in touch with my employer and have him come right up.

Q. What did you say? A. I explained to them that it was 130 miles between here and where my employer was; if they would set a date I would assure them that he would meet them and talk over anything they wanted to talk over. So I made a bargain with them and set a date for 10 o'clock the next morning for my employer to 4394
come and see them. So they let me continue unloading that day.

Q. Did they say anything else that you now remember? A. Not at that time. I don't remember anything.

Q. Did Mr. Zohlman come into New York the next day? A. Yes, sir.

Q. Did you come with him? A. No, I did not.

Q. Well, were you here at the same time? A. Yes. I brought a load in the next day.

Q. Do you know what time Mr. Zohlman arrived in New York? A. I would say 9 o'clock in the morning.

Q. Was he at the Pritchard Warehouse around ten? A. Yes.

The Court: Did you see him there?

The Witness: Yes, sir. 4395

Q. Do you know how long he stayed there? A. Well, I left before he did. He told me he stayed until 6 o'clock.

Q. When did you leave? A. Well, I would say 11.30 to a quarter to 12, I would leave.

Q. Had any of these three men showed up by that time? A. No, sir.

Q. Did you unload your truck yourself? A. Yes, sir.

Q. Now, did you see any of the men that day? A. No, sir.

Q. You say you did see them again, however? A. In about two weeks I would say.

Q. At the same place? A. Yes, sir.

Q. Will you describe what happened on that occasion? A. Well, about the same conversation took place, and I told them they didn't complete their part of the bargain. They made a date and they failed to show up.

Q. What did they say? A. They said they were busy working somewhere else and couldn't make it and that I better have my employer come up and see them as soon as
4397 possible. So naturally I reported that back to the boss when I returned.

Q. Did you unload your own truck again that day? A. Yes, sir.

Q. Did you ever see those three men again? A. I don't believe I have, no, sir.

Q. Now, do you know anyone named James Murphy? A. Yes, sir.

Q. Will you stand up and tell us if you see him here in court? A. (Standing) Yes, sir, I do.

Q. Where is he? A. In the back row, next to the last seat.

Q. On which end? A. On the far end from here.

Mr. Marks: May the clerk call the name of James
4398 Murphy.

The Clerk: James Murphy.

(A man stood up.)

Q. Is that the man who is standing up? A. Yes, sir.

Q. When did you see him for the first time? A. The next day after Mr. Zohlman came to New York the second time.

Q. Well, how long after the second meeting you had with these other men? A. If I remember correctly, I had an-

other load to bring up to the warehouse; not the day that Mr. Zohlman came up, but the following day, the second trip, and he came up to make—to try to make arrangements so I wouldn't have any trouble.

Mr. Maguire: Move that it be stricken out.
The Court: Strike it out.

Q. Was it a few days after your second meeting with these three men or a few weeks that you saw Murphy for the first time? A. A few days, yes, sir.

Q. Where did you see him first? A. On Washington Street.

Q. At the Pritchard Warehouse? A. Yes, sir. 4400

Q. Did you have a conversation with him? A. Very little, if any.

Q. Did you have a truckload of merchandise there? A. Yes, sir.

Q. Who unloaded it? A. I did.

Q. Did Murphy get paid anything on that occasion?

Mr. Boudin: Objected to as immaterial.
The Court: Overruled.
Mr. Boudin: Exception.
The Court: Well, I will sustain the objection to the form of the question. You may ask if he paid Murphy any money at that time. Whether Murphy got paid or not, he may only know that from hearsay. 4401

Q. Did you pay Murphy any money on that occasion? A. Not that day.

Q. Did you see anybody pay him any money? A. No, sir.

Mr. Boudin: Same objection.

Q. Did you have any talk with Murphy about unloading? A. If I remember, he came to me and told me he

was the man that was going to look out after the truck while I was there unloading.

Q. Was there anything else said? A. I think I asked him if he was going to be the man to unload it and he said he wasn't going to unload it; he was just going to watch the truck to see that it wasn't unloaded by anyone else.

Q. Can you remember anything else? A. That is about all.

Q. Beg pardon? A. I don't think there is anything else.

Q. When did you see him for the second time? A. Well, my next trip into New York—I don't know whether it

4403 was the next day. We wouldn't go every day.

Q. Did you used to come in every other day? A. On an average it would be every other day.

Q. Did you see him on your next trip in? A. Yes.

Q. At the same place? A. Yes, sir.

Q. Who unloaded your truck the next trip in? A. I did.

Q. Do you know whether Murphy got paid any money?

Mr. Boudin: I object to that.

The Court: I will allow him to say whether he knows or not.

A. Well, I couldn't tell you whether it was——

4404 The Court: No. The question is, do you know. Do you know? That means do you know of your knowledge whether he was paid any money on that particular occasion.

The Witness: On my second trip up?

Q. Yes. A. No, sir.

Q. In the next two or three weeks after your first meeting with Murphy how often did you see him? A. Every trip I made to New York.

Q. About how often was that? A. I would say at least three times a week.

Q. During those two or three weeks who unloaded your truck each time in? A. I did.

Q. Did you at any time during those two or three weeks pay any money to Murphy? A. Yes.

Mr. Boudin: I object to it.

The Court: Overruled.

Mr. Boudin: Exception.

Q. How often did you pay him during that period?

Mr. Boudin: Same objection. 4406

The Court: Overruled.

Mr. Boudin: Exception.

A. How often?

Q. During those two or three weeks. A. When I came to New York; whenever I made a trip.

Q. Each time you came in you paid him? A. Yes, sir.

Q. How much did you pay him? A. $9.42.

Q. Each time? A. Yes, sir.

Q. How did you pay him? A. In cash.

Q. Did you ask him for anything? A. I have asked him for a reecipt.

Q. What did he say? A. That he didn't have to issue me any.

Q. Did he give you any? A. No, sir. 4407

Q. On each of these trips during the first two or three weeks who unloaded your truck? A. I did.

Q. Did you say anything to him about that? A. Yes, sir.

Q. What did you say about unloading your truck? A. I asked him if he wasn't supposed to unload it.

Q. What did he say? A. He said he wasn't. He was supposed to watch.

Q. Just supposed to watch? A. Watch the truck to see that it wasn't molested by anyone else.

Q. Did he help you unload at any time during those two or three weeks? A. Not the first two or three weeks, no, sir.

Mr. Marks: That is all.

Mr. Boudin: If your Honor please, I move to strike out the testimony of this witness on the ground that it has no relation to the crime charged in the indictment.

The Court: Overruled.

Mr. Boudin: Exception.

4409 *Cross-examination by Mr. Murray.*

Q. Now you say Murphy didn't help you unload for the first two or three weeks, is that right? A. Yes, sir.

Q. Well, after the first two or three weeks did he help you unload? A. Yes, sir.

Q. And that continued for how long? A. As long as I was employed by Mr. Zohlman.

Q. Well, how long did Murphy, to your knowledge, continue to help to unload the trucks? A. While I was employed?

Q. Well, I will withdraw the question.

The Court: How long were you employed?

4410 The Witness: I would say six months.

The Court: From when?

The Witness: From the time Mr. Murphy went to work.

Q. Now, you met Murphy in the spring of 1937, did you? A. Yes, sir.

Q. And then you worked for about six months for Zohlman, is that correct? A. That is right.

4411

Q. And after the first two or three weeks when you met Murphy he helped you unload your trucks, is that right? A. That is right.

Q. And that continued for some five months or more, is that correct? A. Yes, that is right.

Q. What time did you ordinarily get into the warehouse in the morning? A. Generally between 8 and 9.30.

Q. When you got there on each occasion did you meet Murphy? A. Yes, sir.

Q. Did you make any pickups to return to Jersey? A. We would pick up some merchandise at the warehouse sometimes.

4412

Q. Well, did you pick up merchandise then at the warehouse? A. I remember picking up a perforating machine once.

Q. Anything else? A. That is all I recall.

Q. However, some time in the fall or winter of 1937 you didn't see Murphy any more, is that correct? A. After I left Mr. Zohlman's employ?

Q. Yes. A. No, sir.

Q. Well, where are you employed now? A. I am working in Bridgeton, New Jersey.

Mr. Murray: That is all.

The Court: Any further questions.

Mr. Marks: No.

The Court: Witness excused. Next witness.

4413

JOHN A. ZOHLMAN, residing in Park Drive, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Zohlman, what is your business? A. I am in the motor transportation.

Q. And how long have you been in business? A. About fifteen years.

Q. Do you own the business? A. Yes.

Q. Is it located in Bridgeton? A. Bridgeton, New Jersey.

Q. Between what points did you haul? A. Well, Philadelphia, and from Bridgeton into New York. Then I go down to Baltimore and Washington.

Q. In the early part of 1937 how many trucks did you own? A. Well, I owned eight.

Q. What type of commodity did you haul principally? A. Canned goods.

4415 Q. To where? A. To New York warehouse.

Q. What warehouse? A. New York Warehouse.

Q. What company? A. E. Pritchard, Incorporated.

Q. Do you know where that warehouse is located? A. On Spring Street. Between Spring, on Washington—right near the corner of Spring, on Washington Street.

Q. Did most of your trucks at that time, that is, in the early part of 1937, haul solid loads or miscellaneous loads? A. Well, mostly solid loads, one stop; not over two stops.

Q. About how long did it take to unload a solid load? A. Well, to tell you the truth I was never there. So——

Q. You don't know? A. I don't know.

Q. Did your trucks usually pick up anything to take back to Bridgeton? A. No.

Q. Did they ever? A. Well, sometimes there would be
4416 maybe five or ten cases of broken bottles we had to replace and bring back the next time we came up.

Q. But aside from that you had no regular pickups? A. No, that is right.

Q. In the early part of 1937 who unloaded your trucks in New York City? A. Well, my men did at first until I had—I joined up with the union.

Mr. Maguire: I move to strike out the latter part.

The Court: Sustained. He said he wasn't here.

Q. Do you recall making a trip to New York City around the spring of 1937? A. I do.

Q. Do you remember when? A. I couldn't tell you just exactly when.

Q. Do you remember the month? A. No, I don't.

Mr. Marks: May I have this marked for identification?

(Marked Government's Exhibit 51 for Identification.)

Q. I show you Government's Exhibit 51 for Identification, and ask you if that refreshes your recollection as to the approximate time of that visit to New York. A. Yes, I guess that is right. June the 8th. 4418

Q. Pardon? A. June the 8th.

Q. Well, did you make a visit to New York before June 8th? A. Yes.

Q. About when? A. About four or five days before I signed this contract, I believe. I am not quite sure, see?

Q. Before you made this first visit to New York of which we are now talking, did you have a conversation with Sheldon Carll? A. Why, when he came home——

The Court: No. No. Did you have a talk with him before you came to New York?

The Witness: Before?

The Court: Yes. 4419

The Witness: Yes.

Q. Did you come to New York the day after this talk with him? A. Yes.

Q. Where did you go in New York? A. I came to the New York office.

Q. You mean the Pritchard Warehouse? A. Yes.

Q. Was Carll there? A. No.

Q. Did he come there during the day? A. I don't think the trucks came in that day.

Q. Do you remember how long you stayed there? A. I stayed there from 9 o'clock in the morning—about half-past eight in the morning until 6 o'clock that night.

Q. Did you see anyone there? A. No.

Q. Do you remember when you next came into New York? A. I came into New York about a week afterwards.

Q. Whom did you see on that visit? A. I saw Mr. Murphy.

Q. James Murphy? A. James Murphy.

Q. Will you stand up, please, and tell us if you see him
4421 in this court room. A. (Standing) Yes. The last seat on the left up there.

Q. The last seat? A. No, next to the last.

Mr. Marks: May the clerk call the name of James Murphy?

The Clerk: James Murphy.

(A man stood up.)

Q. Is that the man who stood up? A. That is the man.

Q. Where did you see him for the first time? A. I went up to his—I made an appointment with him to meet him.

Q. Where? A. I think it was 23rd Street and Columbus Avenue.

4422 Q. Did you have a conversation with him there? A. I did.

Q. Will you tell us what was said. A. Well, I came to New York with his brother, if that is all right to say that. I came up to New York with his brother. He told me his brother could—was in the union and could help me out.

The Court: Where did you talk with his brother?

The Witness: In Bridgeton, because his brother works—did work at that time at the Bridgeton office.

The Court: Murphy's brother?

The Witness: Yes, sir.

Q. Was this conversation with Murphy's brother after your first visit to New York? A. Yes, sir; and he told me that his brother was a union man in New York and that he thought he could get his brother to work for me. So I went up with his brother and hired Jim Murphy.

Q. What did you say to him and what did he say to you at that time? A. Well, he told me there wouldn't be any more outside Jersey trucks be allowed in New York unless 4424
they had a New York man.

Q. What did you say? A. Well, he said they were stopping them, and I said, "Well, I want to play safe. I want to get a New York man, and if you will work for me, why, I would like to have you."

Q. Did you talk about how much he would be paid? A. Yes. $9.42.

Q. Now, did you go any place shortly after that conversation? A. I don't remember it. That was late in the afternoon.

Q. Did you go anywhere the following day? A. I think he came down and brought a contract, and I signed the contract.

Q. Where? A. I think at Spring Street factory, in the 4425
back by the shipping department.

Q. Did you go anywhere before you signed the contract? A. Not to the best of my knowledge. I came from Bridgeton to sign the contract in New York.

Q. Were you ever up at a building near the exit to the Holland Tunnel on Varick Street? A. Yes. That was on the second contract.

Q. I am referring to Government's Exhibit 51 for Identification, the paper you have before you. Did you go up to that building before you signed that paper? A. No, I didn't.

Q. Where did you get that paper? A. Murphy gave it to me.

Q. What conversation did you have with him around the time that you signed it? A. Well, I just told him if they wouldn't let me in New York City, why, they would put me out of business. So if I had to have a New York union man, why, I would sign up with him.

Q. And did you then sign that paper? A. I signed that
4427 paper.

Q. And you gave it to him? A. I gave it to him and he gave me one and that is the one, I believe.

Q. When he gave you one did it have another signature aside from yours? A. I don't think so.

Q. Well, look at this paper and tell us. A. There is one on there, John Hughes.

Q. Was that other signature on there when Murphy gave you the paper? A. I don't remember.

Q. Do you remember whether or not he sent it to you later? A. No. I had it right then.

The Court: Well, does that make any difference? The paper is here and it has a signature of somebody's.

4428 Mr. Marks: I offer it in evidence.

The Court: Show it to the other side and if there is no objection what difference does it make when the signature got on if it is there.

(Mr. Marks hands paper to defense counsel.)

The Court: Is there objection?

Mr. Boudin: No, sir.

The Court: Received.

(Government's Exhibit 51 for Identification received in evidence.)

Mr. Marks: This bears date, ladies and gentlemen, June 8, 1937, between John Zohlman on the one hand and Local 807 on the other hand, having the signatures of John Zohlman and for Local 807 John Hughes. On the reverse side the names of James Murphy, one, Edward Darcy, two.

Q. Did you make any payment of money to Murphy after you signed that paper, Government's Exhibit 51 in evidence? A. I used to send it with the drivers every trip, or sometimes—well, in the first year I think I used to pay 4430 them every trip.

Q. At what rate did you pay them? A. $9.42.

Q. Per day? A. Yes. Every time I sent a truck up.

Q. How many trucks on an average did you have in New York City in 1937 per day? A. Well, about two a day.

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. Mr. Zohlman, you say you knew Mr. Murphy's brother? A. Yes.

Q. He lived in Bridgeton, did he? A. Yes, sir.

Q. Did you ask Murphy's brother to take you over here and introduce you to James Murphy? A. I did. 4431

Q. Did you know James Murphy before that time? A. Never saw him before.

Q. But it was as a result of the conversation that you had with his brother that brought you to New York to meet him, is that right? A. Yes.

Q. Now, did you say to Murphy in New York that if you were obliged to sign up with a local you would prefer to sign up with Local 807? A. That is right.

Q. Had there been some difficulty with Local 222? A. Never even heard of them before. All I know was 807.

Q. Then when you met Mr. Murphy in New York you told him that if you had to have a union man that you preferred him? A. That is right.

Q. And you asked him if he would work for you, is that right? A. That is right.

Q. Where was your trucking principally concerned with—Pritchard's? A. Yes, sir.

Q. Of course, you did trucking for other concerns? A. No, sir; I am a contract carrier.

Q. Well, did you truck merchandise to R. C. Williams?
4433 A. Yes, sir. That was from our factory to R. C. Williams.

Q. Yes; and then you trucked to Dickman Brothers in Brooklyn, didn't you? A. Yes, sir.

Q. Austin, Nichols also? A. Yes, sir.

Q. Krasne in the Bronx? A. Yes, sir.

Q. And also you did some trucking to Decatur Street, Brooklyn? A. Decatur Street, yes, sir.

Q. What place is that, Mr. Zohlman? A. Well, I can't tell you. I will tell you the reason why——

The Court: No, never mind.

Q. It is all right, I am just asking you if you remember.

The Court: You can't tell us. That is enough.

4434 Q. Then you trucked to Roulston, didn't you, at 9th Street, Brooklyn, is that right? A. If that is on the telegram, yes, sir. Because we sent them telegrams out—I don't know nothing about it. They are my telegrams.

Q. Do you want to refresh your recollection from this (handing paper to witness)? A. Yes, sir; I sent all them telegrams.

Q. You were in the habit of sending telegrams from your place in Jersey to Murphy in New York? A. That is right.

4435

Q. When you expected to deliver some place you would send a telegram to Murphy requesting him to meet your truck? A. That is right.

Q. And that went on for some time, didn't it? A. Yes, sir.

Mr. Murray: That is all.
Mr. Marks: No redirect.
The Court: Excused.

(Witness excused.)

The Court: Any more witnesses?
Mr. Marks: No, your Honor.
The Court: 10.30 tomorrow morning.

4436

(Adjourned to May 3, 1940, at 10.30 A. M.)

New York, May 3, 1940,
10.30 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

The Court: The Court will say for the information of the jury that the reason for our tardiness in starting today was the absence of a defendant through no fault of his.

4437

EMILY B. LIBE, residing at 20 Belvidere Avenue, Phillipsburg, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mrs. Libe? A. Trucking business, general trucking.

Q. What is the name of your company? A. E. B. Libe Auto Transfer.

Q. Between what points do you truck merchandise? A. Within a radius of 100 miles from Phillipsburg, in all directions.

Q. Do you truck merchandise into New York City? A. Yes, sir.

Q. What kind of merchandise? A. General.

Q. What kind principally? A. Machinery and chemicals, principally.

Q. Were you engaged in that business in the beginning of 1937? A. I was. Crayons, paints, chemicals and ma-

4439 chinery.

Q. At the beginning of 1937 who unloaded your trucks in New York City? A. My drivers.

Q. Did a time come when other persons unloaded your trucks in New York City? A. Yes.

Q. When was that time? A. During April of 1937.

Q. Other persons began to unload your trucks? A. Yes.

Q. Can you give us the names of other persons who unloaded your trucks in New York City? A. Ed Franz, William Stratton, Martin Marino—I think that is the correct name—and two other men who I paid but didn't get their names. They were paid in cash and I didn't get their names nor did I get a receipt from them.

Q. Did you have a conversation with Franz in New York City about that time? A. Yes, I did.

4440 Q. Where was the conversation held? A. One Saturday afternoon at the Dixie Hotel.

Q. Did you talk about unloading your trucks in New York City? A. Yes.

Q. What was the conversation?

Mr. Maguire: Objected to as not binding on the defendants.

The Court: Sustained.

Q. Did you thereafter meet Franz on several occasions? A. Yes.

Q. Do you know his voice? A. Yes.

Q. Before you came to New York City on this occasion where you spoke to him at the Dixie Hotel, did you have any other conversation with him? A. Yes; over the telephone. He stopped my truck——

The Court: No. Strike out after "telephone".

Q. How long prior to the conversation in the Dixie Hotel was that conversation held? A. I would say two or three weeks.

Q. Before that? A. Yes. 4442

Q. And before that telephone conversation were your own men unloading your trucks? A. Before? Yes. My own men were unloading the trucks.

Q. And after that telephone conversation did Franz unload your trucks? A. Yes. Franz or someone else; not my man.

Q. In addition to those conversations, two conversations which you have mentioned, did you again meet Franz in New York City? A. Yes.

Q. Where? A. As I came out of the—through the Holland Tunnel, on this side of the Holland Tunnel, he was waiting and met me as I came in on my truck.

Q. Where did you go? A. He told me to go and see Mr. Campbell of Local 807.

4443

Q. Will you stand and look around this court room and tell the Court and jury if you see Mr. Campbell here? A. Well, I don't remember faces very well, but I will try; it is several years ago and I only saw the man once.

Q. Well, let me put this question to you first: Did you go to Local 807 and see Mr. Campbell? A. Yes, I did.

Q. Did you have a conversation with him? A. Yes, I did.

Q. Well, will you now stand and look around the court room and see if you see that person here? A. I am quite sure the gentleman in the first row on that side (indicating). The first long seat on that side of the bench, yes.

Q. Is he the first man on the side? A. Yes.

Q. Which end? A. On the end near the wall.

Mr. Ennis: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

(A man stood.)

4445

Q. Now, Mr. Franz told you to go and see him? A. Yes.

Q. Now, going back to the first telephone conversation that you had with Mr. Franz before you met him in the Dixie Hotel—will you give us that conversation?

Mr. Maguire: Objected to. No proper foundation laid.

The Court: Overruled.

Mr. Maguire: Exception.

Q. Will you state that conversation? A. Will you repeat that? I am sorry, I didn't follow you.

Q. The first telephone conversation you had with Ed Franz before you met him in the Dixie Hotel in New York.

4446 A. He stopped my trucks——

The Court: No.

Mr. Maguire: I move to strike it out.

The Court: Strike it out. Tell us the conversation. Don't say what was done.

Q. Just what you said to him and what he said to you.

A. He told me I would have to pay to get my truck un-

loaded in New York or it could not be unloaded. Can I tell what I said to him?

Q. Yes. A. I asked him what for, and he could not give me any reason except that I must pay, and I said, "It is a racket"——

Mr. Maguire: I move to strike it out.

The Court: Strike it out. What did he say?

The Witness: He said I must pay and I wanted to know what for.

Q. What did he say when you asked him what for? A. He said that we could not unload unless we had a New York driver on or a New York loader on, and I said it was 4448 just a racket.

Q. What did he say to that? A. I still had to pay or not unload.

Q. Did you have a truck in New York City at that time? A. Yes.

Q. Was there anything said about that? A. Did I have what?

Q. Was there anything said about that in the conversation? A. He said the trucks could not come to New York unless I paid.

Q. Do you remember anything else that was said in that conversation? A. He also stated that I would have to pay for every truck that came into New York, and I told him I would not, it was a racket, and I could not see why I 4449 could not drive my pleasure car or hire a man whom I knew to drive my trucks, an employee who I had hired. I had not hired him.

Q. What did he say to that? A. He said I could not come into New York unless I paid, regardless.

Q. Now, after that conversation what did you do? A. Well, I gave my men more expense money so that when they were stopped in New York they could pay to be unloaded.

Q. Well, you gave them expense money for later trips? A. Yes.

Q. Now, I understood you to state that you had a truck in New York at the time of this conversation? A. Yes, I had to wire the money in so the truck could be unloaded.

Q. You wired the money in? A. Yes.

Q. How large was that truck, do you recall? A. About a 2½ or 3-ton truck.

Q. Do you recall how much money you wired in? A. I wired in $10 or $12; more than the driver had to pay. He paid $8 and some cents.

Q. Now, before your face to face conversation in the
4451 Dixie Hotel, did you have another telephone conversation with Ed Franz? A. Yes, that I would——

Q. Did he call you or did you call him? A. No, I have not called him at any time.

Q. Where were you at the time you had this conversation? A. In my office in Phillipsburg.

Q. When was that conversation? A. I would say the latter part of April.

Q. What was said in that conversation? A. He said I would have to come into New York and sign up with Local 807 or they would not let my trucks come into New York; even though I paid men who got on them in New York, I would have to sign up.

Q. Did you pay men for unloading your trucks? A. I had been paying prior to that.

4452 Q. What did you say to that? A. I said I would not sign up because I felt it was a racket, and I would not sign up.

Q. What did he say to that? A. Well, he said we could not come into New York.

Q. Anything else said? A. He said I would have to come down to the union and see Mr. Campbell.

Q. And was it after that conversation that you came in on your truck and met Franz on the other side of the Holland Tunnel? A. I come in on my truck and he was wait

ing on the other side of the Holland Tunnel, and before he would even unload it or allow me to have it unloaded—

Mr. Maguire: I move that that be stricken out.
The Court: Yes.

Q. What did he say? A. He said I should go in to see Mr. Campbell and sign up.

Q. What did you do? A. I went in to see Mr. Campbell.

Q. Where did you go to see him? A. The union headquarters on Varick Street.

Q. Was anyone with Mr. Campbell when you saw him? A. There was a number of people in union headquarters. He was quite busy. 4454

Q. Did you have a conversation with Mr. Campbell? A. Yes. I wanted to know what it was all about. I could not understand why or what it was all about.

Q. Did you ask him what it was all about? A. Yes.

Q. What did he say? A. And I wanted to know whether —what I had to do, what men I had to put on, who I had to pay or what I had to do; and he gave me a folder and he told me to sign it and bring it in, which I did not do.

Q. Do you remember anything else that was said in that conversation? A. I just don't recall anything else.

Q. Was anything said about the amount of trucks you had in New York City? A. Mr. Campbell told me I would have to have a man on every truck I sent in to New York City; and I asked him—I said, "Some of my trucks come 4455 in and they are only in a half hour. Could one man unload—I might have three trucks to one pier, and it would not take them more than two hours to unload the three trucks, and I could not pay three men at the rate of $8 and something a day for a half-hour's work."

Q. What did he say to that? A. He said I would have to have a man on every truck that came into New York regardless of time.

Q. After that conversation and about that time did you have a man on every truck? A. At that time, yes, I was forced to put a man on every truck.

Mr. Maguire: I move that that be stricken out.

The Court: Strike out "I was forced to put a man on every truck."

Q. Did you ever again visit union headquarters? A. Yes.

Q. With whom? A. Ed Franz took me there.

Q. Do you remember the time? A. The beginning of May, about the 10th or 12th of May.

4457 Q. Well, now, between your first and second visits to union headquarters, did you have other conversations with Ed Franz? A. That I can't recall.

Q. Well, before your second visit to union headquarters did you have any of your merchandise to be delivered in New York City handled by the Donnelly Freight Company? A. Yes, on the 11th, I believe, of May I sent my trucks to New York, the 11th or 12th of May—the 11th I believe it was—I sent my trucks to New York, and Franz and Stratton would not unload them.

Mr. Maguire: I move to strike it out.

The Court: Strike it out.

Q. Did you have a conversation with Franz about that?

4458 A. Yes.

Q. Where did you have the conversation? A. In New York.

Q. When? A. The day that the trucks—either the 10th or the 11th—the day the trucks were in New York and could not unload.

Mr. Maguire: I move that that be stricken out.

The Court: Strike out "and couldn't unload."

Q. You came to New York that day? A. Yes.
Q. And you had a conversation with Franz? A. Yes.

By the Court.

Q. Where? A. Just the other side of the Holland Tunnel—this side of the Holland Tunnel.
Q. The New York side? A. Yes, the New York side.

By Mr. Ennis.

Q. What was said in that conversation? A. That we could no longer come to New York and unload——

4460

By the Court.

Q. Well, who said that? A. Mr. Franz.
Q. What did he say? A. We could no longer come to New York and unload unless we joined the union; and we took our merchandise back to Jersey and had union men from Newark bring it over——

Mr. Maguire: I move that that be stricken out.
The Court: Well, she can say that if she knows it.
Mr. Maguire: Exception.

A. (Continued) And they were in turn turned back and I——

4461

Mr. Maguire: I move that that be stricken out.

Q. Were you there? A. I beg your pardon?
Q. Were you there? A. Yes, sir, I was there.
Q. And who was present? A. Who was present?
Q. Yes. A. My truck drivers.

Q. When these trucks came back from Newark, who was present? A. I was. I was with them.

Q. Who else was there? A. My truck drivers.

Q. Anybody else? A. The union men that I got on from Newark.

Q. Anybody else? A. Yes, Mr. Mooney.

Q. Anyone else? A. I don't think so.

Q. Was Franz there? A. In Newark?

Q. No, in New York. A. Oh, yes, Franz was in New York.

Q. When your trucks came over from Newark? A. Yes.

Q. Did he say anything then? A. I did not come over with the Newark union men when they came over. I stayed in Newark.

4463

The Court: Strike that testimony out then.

By Mr. Ennis.

Q. Did you have any conversation with Franz about the delivery of that merchandise? A. Nothing except that morning when we came in and he would not unload it.

Q. After you went back to Newark and the trucks came back to New York, did you have any conversation with him that day? A. Yes, Franz told me to sign up and I would not have any more difficulties in getting unloaded. The next day I went down to the union and signed up.

4464 Q. Did you have any conversation with him about the Donnelly Company unloading for you? A. No, he didn't know the Donnelly Company—he didn't know we had given it to the Donnelly Company because we understood that——

Mr. Maguire: I object to that.

The Court: Never mind the "because." Strike that out.

Q. Did the Donnelly Company unload for you in New York City? A. Yes.

Mr. Maguire: Objected to as immaterial.

The Court: I will allow that if she was present.

The Witness: When the Donnelly Company unloaded?

The Court: Yes.

The Witness: I was not.

The Court: Strike it out.

Mr. Maguire: I move that the answer be stricken out.

The Court: I have already directed that it be stricken out. 4466

Q. Do you know of any occasion of your own knowledge either before or after this Newark episode where the Donnelly Trucking Company did unload for you in New York City? A. Do I know of any other time?

By the Court.

Q. He means were you present at any time? A. No.

Q. Is the Donnelly Company still in existence? A. Yes, they still deliver——

The Court: No, that is enough. I just wanted to know that one thing. 4467

By Mr. Ennis.

Q. Apart from this Newark episode, did you in your business make any arrangements——

The Court: Now, just a moment, let us not have this referred to as the Newark episode.

Mr. Ennis: I am sorry, your Honor.

The Court: That testimony I struck out. The witness testified that certain trucks came over here and they went back to Newark and then they came here a second time, and she had a conversation with Mr. Franz, and then she went back the next day to the union headquarters and signed some paper.

The Witness: Yes.

The Court: That is as I understand the testimony.

The Witness: Yes.

The Court: Now I do not know what you may mean by the "Newark episode" and I suggest that you do not characterize it by that term.

4469

Q. Did you on one occasion ride back on your truck which had merchandise for New York? Did you ride back to Newark? A. Yes.

Q. You did? A. Yes.

Q. And you left the truck at Newark? A. Yes.

Q. Did you direct them where to go? A. Yes, I directed them what to do.

By the Court.

Q. Then after you left the truck in Newark, did you come back to New York? A. I didn't.

Q. Did you go home? A. No; I waited in Newark.

4470 Q. Did you come to New York that day or the next day? A. No, not that day; the next day.

Q. That is the day you had the conversation with Mr. Franz? A. No. The day that the trucks were not unloaded and went back to Newark was the day.

Q. That was the day you had the talk with him? A. Yes.

Q. Then it was the next day you came back and saw Mr. Campbell? A. No, I didn't see Mr. Campbell the next day.

Q. You went to headquarters? A. Yes, that is it; and signed some papers. I saw Mr. Larkin.

By Mr. Ennis.

Q. Now, Mrs. Libe, going back to the time you were at Newark with your trucks and had given them directions as you stated; did you see the trucks again at Newark on that day? A. Oh, yes.

Q. A second time at Newark? A. Oh, yes.

Q. Did they have that New York merchandise on them the second time you saw them? A. No. They had unloaded it——

Mr. Maguire: I object to any further statement. 4472
The Court: Strike out after "No."

Q. Now, Mrs. Libe, whom did you see at the union headquarters when you went there the second time with Franz? A. Mr. Larkin.

Q. Do you know anyone else by name whom you saw? A. No.

Q. What time of the day did you go there? A. About 11 o'clock in the morning.

Q. Did you see Mr. Larkin at once? A. Yes. But he left me. After I had asked him a few questions he left the room.

Q. Were you alone in that room? A. There were men coming from another room.

Q. How long were you in the room? A. About three 4473 hours.

Q. At the end of that time whom did you see? A. Mr. Larkin.

Q. Before you saw Mr. Larkin did you leave that room? A. I could not leave the room; it was locked.

Mr. Maguire: I move that it be stricken out.
The Court: Strike out "I could not leave the room."

Q. During that period of three hours did you open the door of that room? A. The door was locked.

The Court: Did you try to open the door?
The Witness: Yes, sir.
The Court: You couldn't open the door?
The Witness: I could not open it.

Q. Now, after waiting in that room did you see Mr. Larkin again? A. Yes.

Q. Did you have a conversation with him? A. Yes.

Q. What was said in that conversation? A. I tried to find——

4475

Mr. Maguire: I object to the conversation with Larkin as not binding on the defendants.
The Court: Overruled.
Mr. Maguire: Exception.
The Court: Just what was said.

Q. Will you state the conversation, Mrs. Libe? A. I asked Mr. Larkin if I had two trucks in New York with a half hour's stop, if I would have to have a man on each truck; I wanted to understand what it was going to cost me, or what I could do to get my merchandise delivered; and he told me that I would have to have a man on each truck regardless of the length of time it was in New York. And I also asked about an hourly rate and if I could interview and hire a man whom I would feel suitable to work for me, and I was told there were two men there to serve my trucks and that was all I could do about it.

4476

Q. Did he show you anything? A. Did he show me anything?

Q. Yes. A. A contract.

Q. Well, did you have any talk about that? A. Well, I didn't know what it was all about and I tried to find out what I was signing or why I was signing it, and he became very angry.

Mr. Maguire: I ask that that be stricken out.

The Court: Strike it out.

Q. What did he say and what did he do? A. He became angry and picked up an envelope and was going to slap—

Mr. Maguire: I object and move that it be stricken out.

The Court: Denied. 4478

Q. He picked up an envelope? A. Yes.

Q. What did he do with the envelope? A. Attempted to slap my face.

Mr. Maguire: I move that it be stricken out.

The Court: Denied.

Mr. Ennis: I request that this paper be marked Government's exhibit for identification.

The Court: Mark it.

(Marked Government's Exhibit 52 for Identification.)

Q. Mrs. Libe, I show you Government's Exhibit 52 for Identification. Is that your signature on that paper? A. Yes, sir. 4479

Q. Do you remember when you signed it? A. I signed that in 1937 at the time that I was just speaking of, when I met Mr. Larkin.

Q. Was this paper referred to in the conversation? A. Yes. That is the paper I did not want to sign.

Mr. Ennis: I offer it in evidence (handing to defense counsel). There appears to be no objection.

Mr. Maguire: No objection.

The Court: Mark it.

(Marked Government's Exhibit 52 in evidence.)

The Court: Tell the jury about it.

Mr. Ennis: This paper, dated May 12, 1937, states itself to be an agreement between Emily Libe and Truck Drivers and Chauffeurs Local 807, and it is signed for the firm E. B. Libe, owner, and for Local 807, John Flaherty, and on the re-

4481 verse side it has the two names Edward Franz and William Stratton.

Q. Mrs. Libe, do you recall whether or not you saw those names on the reverse side written on that paper? A. Yes, I did see them.

Q. Written on the paper on that occasion? A. Yes.

Q. Was there any conversation about that subject? A. Yes.

Q. What was said? A. I asked why I couldn't——

The Court: Asked whom?

The Witness: Mr. Larkin. I like to interview a driver before I hire him, and I wanted at least to

4482 interview a driver or two before I would put them on my trucks, but he had these drivers waiting for the truck and therefore I had no say about it.

Q. Now, Mrs. Libe, between your first and second visits to this union hall did you have any conversation at your home in Phillipsburg about the subject of unloading your trucks in New York City?

The Court: Yes or no.
Mr. Boudin: Objected to.
The Court: Yes or no.

A. Yes.

Q. What time was that conversation? A. 11 o'clock at night.

Q. Did you during that period see anything around your home? A. Yes. I——

The Court: That is all. The answer is yes.

Q. What did you see?

4484

Mr. Maguire: Objected to, if the Court please.
The Court: I will sustain the objection as to form.

By the Court.

Q. When did you make any observations for the first time? A. During the latter part of April, 1937.

Q. When was it with respect to the conversation you said you had at 11 o'clock at night? A. The observations were in the morning before that time; around 4 o'clock in the morning.

Q. The same day? A. For a number of days.

Q. How early? A. 4 o'clock in the morning.

Q. Where were you when you made these observations? 4485
A. In my office and in my garage.

Q. Did you see persons in the vicinity? A. Yes, sir.

Q. And did you know any of the persons at that time? A. No.

Q. Did you ever see the persons afterwards? A. No, I have not.

Q. Did you have any conversation with a person? A. Yes: the one at 11 o'clock at night.

Q. Where did that conversation take place? A. In my office.

Q. Is your office in the house where you live? A. My house, office and garage are all in one building.

Q. Now, do you know who the person was with whom you had this conversation? A. I do not.

Q. Before you had that conversation did that person show you anything? A. No.

Q. Can you describe the appearance of that person? A. Yes. A slight man with light hair that he combed back; very thin hair on the top of his head, and very sallow complexion. I shall never forget him.

4487 Q. Have you ever seen him since? A. No.

Q. You say you had this conversation with him at night? A. Yes.

Q. And is he one of the persons whom you saw at an earlier period? A. No, he is not. In fact, each morning they were different people; they were not the same people every morning.

Q. Well, did any of these people ever show you anything? A. No.

By Mr. Ennis.

Q. Did you see anything with these people?

Mr. Maguire: I object to pursuing this line of questioning any further as entirely prejudicial.

4488 The Court: I will allow it.

Q. You saw these people around in the morning? A. Yes.

Q. Where did you see them? A. In an automobile.

Q. Did you notice the license plates? A. I did not.

Mr. Maguire: I object to it.

The Witness: No. New York license plates, but not the numbers.

Q. Mrs. Libe, will you stand up and look around this court room again and tell the Court and jury if you saw the man with whom you had a conversation at 11 o'clock that night——

The Court: If you now see the person.

Q. (Continued) Yes. If you now see the person.

The Court: You may step down if you wish.

A. I think I would remember him too well no matter what distance. No, I do not.

Q. Did you look all around the court room? A. Yes, I 4490
have.

Q. You are quite satisfied he is not here? A. Yes.

Q. In this conversation with this unknown person was anything said about——

The Court: No. Now, just a moment; you are not testifying.

Q. Did you have a conversation with a person at 11 o'clock at night? A. Yes.

The Court: She said so.

Mr. Cahill: Judge, may we come up a moment?

The Court: Yes.

4491

(Conference at the bench between the Court, Mr. Cahill and Mr. Ennis.)

By Mr. Ennis.

Q. Mrs. Libe, between your first and second visits to the union hall, do you recall any particular occasion other than you have mentioned when you were on one of your trucks in New York City? A. Yes.

Q. Where were you? A. I was on West Street, waiting for my drivers to come back.

Q. Whereabouts on West Street? A. Around 14th Street.

Q. Do you recall what merchandise you were delivering that day? A. Chemicals to a pier, and——

Mr. Maguire: I object to any further statement by the witness.

Q. Were you sitting in your truck alone? A. Yes; and the doors were opened and I was asked——

4493 Mr. Maguire: May I object to the witness' voluntary statement?

The Court: Yes.

Q. Did you open the doors of your truck? A. No; they were opened by——

Mr. Maguire: Now, I object to that, if the Court please.

The Court: Sustained.

Q. Were the doors of your truck opened by anyone you knew? A. No.

Q. Were they opened— A. They were men who said they were union men.

4494

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out. The jury will disregard the statement of the witness which was not in response to a question put by the examining counsel.

Q. Mrs. Libe, did you have a conversation at that time? A. Yes.

Q. Did you know the person with whom you had the conversation with anyone at that time? A. Yes.

Q. Did you know the person with whom you had the conversation? A. No.

Q. Had you ever seen any of those persons before? A. No.

Q. Did you ever see them subsequently? A. No.

Q. How many were there? A. Two.

Q. How were they dressed? A. In workmen's clothing.

Q. Did they show you anything? A. No.

Q. Did you see anything on their clothing? A. No.

Q. Did they tell you their names? A. No.

Mr. Maguire: I object—withdrawn. 4496

Q. Did these persons get on your truck?

Mr. Maguire: Objected to as immaterial.

The Court: I will allow it.

Mr. Maguire: Exception.

Q. Did these persons get on your truck? A. Yes; they pushed me off.

Mr. Maguire: May I ask that it be stricken out.

The Court: Strike it out. Did they get on your truck?

The Witness: Yes.

Mr. Murray: I ask your Honor to direct the jury to ignore the voluntary remark of this witness. 4497

The Court: I so direct.

Q. Mrs. Libe, just answer yes or no. Did these persons tell you who they were——

Mr. Maguire: Objected to.

The Court: She has already said that they did not give their names.

Mr. Ennis: I did not mean their names alone, your Honor.

The Court: Well, I will exclude the question.

Q. After these persons got on your truck, did they stand on the running board or sit in the truck?

Mr. Maguire: I object to this as immaterial.

The Court: Sustained.

Q. Where did you go after these persons got on your truck? A. Across the highway, across the street.

Q. Did you speak to anyone?

4499

Mr. Maguire: I object to this as immaterial; highly prejudicial.

The Court: You may answer yes or no.

A. Yes.

Q. With whom did you speak?

Mr. Maguire: I object to it as immaterial; certainly not binding on these defendants.

By the Court.

Q. Do you know who the person was to whom you spoke? A. Yes, sir.

4500 Q. Do you know him by name? A. No, sir.

Q. Do you know him because of the manner in which he was dressed? A. Yes.

By Mr. Ennis.

Q. What was he?

Mr. Maguire: Objected to.

The Court: I will allow it.

Mr. Maguire: Exception.

The Court: You may answer.

A. An officer.

By the Court.

Q. You mean a police officer? A. Yes, sir.

Q. Did you have a conversation with him? A. A few words.

Q. And then did you go back to your truck? A. No, sir.

By Mr. Ennis.

4502

Q. Did you go any place with him?

Mr. Maguire: I object to it as immaterial.

The Court: Sustained.

Q. Did you see him go to your truck? A. See who?

Q. The police officer. A. The police officer did not go to my truck.

Mr. Ennis: That is all.

Mr. Murray: If your Honor please, in behalf of my defendants I move for a withdrawal of a juror on the ground that the questions asked by the Government's attorney and the response made by this witness in respect to an incident in New Jersey is 4503 highly prejudicial. I submit, your Honor, that it was inadmissible for any purpose to connect my defendants, and I urge your Honor to grant a mistrial.

The Court: Well, in the first place, that was stricken out; the jury was directed to disregard it.

It does not seem to me that anything has been brought out here that is prejudicial, and I will deny your motion.

Mr. Murray: Will your Honor hear me further, please?

The Court: No.

Mr. Murray: I respectfully except.

The Court: Not in the presence of the jury. I will hear you at recess time.

Mr. Maguire: May it be considered that the motion is made in behalf of all the defendants?

The Court: Yes, and denied.

4505 Mr. Maguire: And exception.

Cross-examination by Mr. Murray.

Q. What kind of a looking man was Mr. Larkin? A. I tell you—I want to tell you I don't remember faces very well.

Mr. Murray: Now, I move to strike out the answer as not responsive.

The Court: Strike it out.

Mr. Murray: May the stenographer repeat the question, if your Honor please?

The Court: Yes. Read the question.

Q. (Read.) A. Do you want me to answer?

4506 Q. Did you hear the question? A. Yes, sir. Do you want me to answer it?

Q. That is why I asked you.

The Court: That is the purpose of the question, madam.

A. He was fairly stout, and that is about as much as I remember of him.

Q. Now, madam, is that the best description you can give of Mr. Larkin? A. Yes, sir.

Q. Is it your testimony that you were in union headquarters for almost three hours? A. Yes, sir.

Q. Were you looking at Mr. Larkin for three hours? A. No, sir, Mr. Larkin went out and left me.

Q. How long were you in Mr. Larkin's presence? A. I would say about fifteen minutes.

Q. And Mr. Larkin, you have testified, tried to strike you in the face with an envelope? A. Yes, he did.

Q. Is that correct? A. It is correct.

Q. Now, did you ever have any experience before in your life where a man tried to strike you in the face? A. 4508
No, sir.

Q. And in view of that fact, is that the best description you can give me of Mr. Larkin? A. Yes, sir, because I was very much frightened and nervous.

Q. Did you go for a uniformed officer at that time? A. No, sir, I did not.

Q. Did you make a complaint to anybody? A. No, sir, I did not.

Q. Did you make a complaint to anybody in union headquarters? A. Well, I thought that I was in union headquarters and there was no reason to make any complaint there.

Mr. Murray: May I have the answer stricken out, if your Honor please?

The Court: Let me hear the question again. 4509

(Question read.)

The Court: Denied.

Mr. Murray: Exception.

Q. When did you next see Mr. Larkin again? A. I have never seen him since.

Q. Were you ever shown his picture by anybody? A. No, sir.

Q. Look down among the defendants, if you please, sitting here at your right and tell me whether or not you see Mr. Larkin there? A. (Witness glances around court room.)

Q. Madam, I direct your attention to these men on the right, inside this rail, and not out in the court room. A. (Standing) I am certain I don't recognize Mr. Larkin if he is here.

Q. Will you look down among these men and see if you see Mr. Franz there? A. Ed Franz?

Q. Yes. A. No, he is not there.

Q. Will you look and see if you see Mr. Stratton there.

4511 A. No, I don't see him either.

Q. Will you look and see if you see Mr. Marone there? A. I never saw Mr. Marone.

Q. You may be seated if you want to. Now, is Mr. Franz the man that first stopped your truck? A. Yes, sir.

Q. Is Mr. Franz the man that told you that you would have to have a union driver? A. Yes, sir.

Q. Is Mr. Franz the man that took you to union headquarters? A. Yes, sir.

Q. And is Mr. Franz still working for you? A. He never worked for me.

Q. Do you mean that? A. He is still unloading my trucks, but I never hired him.

Q. How long has he been unloading your trucks? A. Since April of 1937.

4512 Q. And have you been paying him since April of 1937? A. Yes, sir.

Q. Has Mr. Stratton worked on your trucks since April of 1937? A. He is not any longer working on my trucks.

Q. When did he last stop working on your trucks? A. I would not tell without reference to my books.

Q. How long a time did you see Mr. Campbell when you say that you first went to the union and had a talk with him? A. A very few minutes.

Q. Well, can you estimate the time more precisely than that? A. Five minutes.

Q. And did Mr. Campbell's appearance fade out of your memory— A. Why, no, Mr. Campbell I saw many times after that time, not to talk to him, but I saw him on the street and he was pointed out to me many times after that time.

Q. Who pointed him out? A. Ed Franz; my brother.

Q. Well, you knew him, didn't you? A. No, I don't remember faces, and I did not know him, but he was pointed out—if I had not seen him again after the first time it would have been very doubtful if I would have known him. 4514

Q. Have you talked to anyone representing the Government recently concerning your being called here as a witness? A. Have I been talking to anyone?

Q. Yes. A. From the Government?

Q. Yes, representing the Government. A. Yes.

Q. When? A. This morning.

Q. Any time before this morning?

The Court: We will take a recess at this time.

Mr. Murray: May I ask your Honor to admonish the witness——

The Court: Yes; the witness may leave the room but is not to talk to anybody until she comes back here on the witness stand.

(Short recess.) 4515

(The following occurred in chambers:)

The Court: Now, Mr. Murray.

Mr. Murray: Judge, I am very serious in urging my motion for the withdrawal of a juror because I feel that the questions submitted by the United States attorney with the responses given by the witness created and only could create one impression

in the minds of this jury, and that is that it was members of the union or their representatives who were prowling about a woman's house at 4 o'clock in the morning apparently bent on either violence to her or threats, and that it was the most vicious, rankest attempt to get this woman to join the union. I do not know what other impression this jury can carry away by that character of testimony. I appreciate the fact that your Honor struck it out, and that you advised the jury to disregard it, but I do not think they are humanly able to do it.

Mr. Cahill: May I state my view for the record?

The Court: Yes.

4517 Mr. Cahill: My view is that the incidents occurred at the time when the witness was being urged to sign this purported or alleged contract. The Government offers to prove that the conversation that was excluded had to do with the subject matter of the signing of the contract of Local 807. The Government offers further, and the testimony shows, that the time of the conversation was directly related to the activities in regard to causing the woman to sign in the union hall. The Government feels for these reasons that the proof was proper.

The Court: Does anyone else want to be heard?

Mr. Maguire: Yes. I would like to call your Honor's attention to the fact that it is not only a

4518 question of the conversation that the Government refers to and says will be tied up in some way, but here it is apparently some unknown individual, unrelated and unconnected individuals are supposed to be hanging around her home at 4 o'clock in the morning. There is absolutely no connection there, and the Government further does not offer to establish that.

Mr. Cahill: If your Honor please, these events at 4 o'clock in the morning occurred on the same night and the nights preceding and the nights following this episode or this visit at this very late hour of night, 11 o'clock at night, at Phillipsburg, New Jersey, where the person conversed with the witness about what she had better do with regard to signing a contract with Local 807.

Mr. Murray: If I thought there was a word of truth in the testimony, your Honor, I would not feel about it as I do.

Mr. Cahill: Well, that is a different question entirely.

4520

Mr. Murray: In respect to that particular evidence——

The Court: Now I interrogated this woman myself very exhaustedly, and I did it, usurping perhaps, the function that belonged to counsel, because I wanted to avoid bringing into this case any extraneous matter or any prejudicial matter, and at the same time satisfy myself that this woman who was in a position to give some basis of identification or the related connections of the persons with whom she had these conversations. She did not connect up the people who were around there at 4 o'clock in the morning with the people who were there at 11 o'clock at night. Now, does anybody else want to be heard?

4521

Mr. Duff: Will your Honor have the record show that Mr. Murray's motion for a withdrawal of a juror and declaration of a mistrial is joined in by all counsel for all of the defendants in this case?

The Court: Yes.

Mr. Duff: For the reason that, speaking for the defendant Nooman, who Mr. Aronstein and I represent, even though as yet he has not yet been men-

tioned in this case, I feel that the testimony is so highly prejudicial, it casts a cloud over every defendant that sits there.

The Court: Up to now it doesn't do your client any harm.

Mr. Duff: No, up to this time, that is true; but I do not know what subsequent events—I never know when the lightning is going to strike; and when, if it does strike, I feel it might be very prejudicial.

(The following proceedings were had in the court room:)

The Court: Members of the jury, as I said to you at the outset of this case, the function of the 4523
Court is to pass upon questions of law and particularly upon the admissibility of testimony. I have excluded certain questions propounded to this witness with respect to persons with whom it was sought to prove she may have had conversations at her home or place of business in Phillipsburg, New Jersey, on several occasions at 4 o'clock in the morning or thereabouts and 11 o'clock at night on one of those occasions, and I have excluded that testimony by reason of the lack of identification of the persons with whom those conversations may have been had, and I have done that upon the theory that a defendant is entitled to an opportunity to locate and to present witnesses to refute statements 4524
which are made against him, and he can only do that when there is at least a sufficient foundation to indicate to him that the persons with whom these conversations are alleged to have taken place can be brought within the orb that would enable a defendant to reasonably by inquiry ascertain and present if possible under those circumstances testimony in refutation if any such testimony really exists.

A motion has been made to declare this a mistrial, and I desire at this time to ask each of the jurors if any of you feel any prejudice against any defendant by reason of the questions which have been put to this witness which I have excluded.

(No response from the jurors.)

The Court: I take it from your silence that you do not, and I ask you again if in the final consideration of this case you will be guided solely by the evidence as it has been adduced here, and that you will accept the interpretation of the law as it is given to you by the Court, and I take it from the nod that the jurors give that your answer is in the affirmative. In chambers during this recess I have further heard counsel upon these motions and I adhere to my previous ruling. 4526

Mr. Murray: If your Honor please, in view of your Honor's question to the jury as to whether or not they have been prejudiced by this character of testimony, I ask your Honor to poll the jury and ask each one individually?

The Court: I will do that.

The clerk will call the roll on the question whether the jurors feel any prejudice by reason of the questions which have been put by the examining counsel for the Government and ruled out, and the jurors may answer yes or no. If a juror feels prejudiced thereby, he or she will answer Yes, and if not, No. 4527

(The clerk polled the jury and each of the twelve jurors answered No.)

The Court: Now ask the alternate jurors.

(The Clerk polled the alternate jurors and each juror answered "No".)

The Court: Proceed with the trial.

Cross-examination continued by Mr. Murray.

Q. Madam, in the three hours that you were locked in the room in union headquarters you had plenty of time to make an observation of the place where you were locked, didn't you? A. I was very nervous.

Mr. Murray: May I have the answer stricken out?

The Court: Strike it out.

The Witness: Will you repeat the question?

The Court: The stenographer will repeat the question.

4529

Q. (Read.) A. Yes.

Q. Well, will you tell this jury in as minute detail as you can what you saw in that room? A. A desk, a chair and two windows with some—a grating Probably more than one desk; I don't recall that; but I know there was one desk and two chairs. One I sat on and one was in front of the desk.

Q. Well, was there anything else in the room that you noticed? A. I don't recall, no.

Q. Was there a telephone there? A. I didn't even notice that.

Q. Was there a telephone on the desk? A. I can't even tell you that.

4530

Q. Well now, during those three hours you felt that your were a prisoner, didn't you? A. No, I did not.

Q. Well, didn't you feel that you were being restrained from leaving the room? A. Yes, I did.

Q. Did you look for a telephone? A. No, I did not.

Q. You say although you felt that you were restrained you did not notice whether or not there was a telephone there? A. No, I did not.

Q. Did it ever occur to you to look for a telephone to call the police and tell them that you were locked in a room? A. No.

Q. Now, was it that day that you signed this contract?

The Court: Exhibit 52.

Q. (Continued) Government's Exhibit 52? A. Yes, sir.

Q. Now, where did you sign this contract, in what room? A. The room that I just described.

Q. Was Mr. Larkin in that room when you signed this contract? A. That I don't recall. I don't remember.

Q. Well, you signed the contract after Mr. Larkin attempted to strike you in the face with an envelope, didn't you? A. Yes. 4532

Q. You say now you don't recall whether or not that man was in the room when you signed the contract? A. No, I don't. To be frank with you I do not.

Q. What kind of looking man was it that signed this contract, Government's Exhibit 52? A. I don't know.

Q. You saw him, didn't you? A. I probably did, but I don't know. May I say I was very nervous.

Q. Did you see the man sign his signature to Exhibit 52? A. No, I did not.

Q. You were there, weren't you? A. Yes.

Q. And the man was there, wasn't he? A. Yes.

Q. And the man sat at a desk, didn't he? A. I don't even remember that. 4533

Q. You sat in a chair near the desk, didn't you? A. Yes, I did.

Q. Can't you give me any description whatever— A. I cannot.

Q. (Continuing) —of the man who signed this contract? A. I cannot.

Q. Was it Campbell? A. I don't know. I couldn't tell you. I don't know.

Q. Was Campbell there? A. If he was there I didn't recall it.

Q. How long after you had been locked in this room did you sign the contract? A. Just before I left.

Q. That was at the end of approximately three hours, was it? A. Yes, sir.

Q. How long was the man in the room who signed the contract for the union in your presence? A. I didn't see him sign it. I don't know who he was, or how long he was in the room.

Q. Did a man sign this contract, Exhibit 52, in that room? A. I couldn't tell you. I don't remember.

4535 Q. What kind of lock was on the door? A. There was a square lock and a key lock, and I went to the door because I was tired of waiting

Q. I am asking you, Lady.

The Court: Strike out "I was tired of waiting."

A. (Continued) And I tried the knob and it wouldn't open, and I tried it again and it wouldn't open. Then I tried the upper lock and turned that but still the door wouldn't open.

Q. The question is what kind of lock or locks were on that door. A. You mean what make?

Q. The description of the character of the lock? A. I am trying to tell you one was a square lock. I think they

4536 call them Yale locks. It has a little knob on the side that you can unlock it from the inside without a key, and the other was a regular door lock that you have a key to to lock it. If the key is there you can get out; if the key is not there you can't get out.

Q. Your testimony is there were two locks on that door? A. Yes. There were two ways of fastening it. I didn't look for the keyhole. I didn't know—there was a knob there I tried to open and I turned the Yale lock or the

lock at the top to get out and it wouldn't open. So therefore I considered it locked and went back and sat down.

Q. You considered it locked? A. Yes.

Q. And that is why you sat down? A. Yes.

Q. And you know of course, don't you, if it were a Yale lock you could open it from the inside? A. Yes. I told you that the other one was a Yale lock, I believe, or something similar to a Yale lock.

Q. Did Mr. Larkin when he entered the room before you signed this contract have a key in his hand? A. Mr. Larkin and the people that was in the room went into another room.

Q. I am asking you when Mr. Larkin returned to the room. A. He didn't come through that door. He came through another door that led into another room. 4538

Q. Well, was there a lock on the door that led into the other room? A. I didn't go in the other room.

Q. Did you see a door? A. Yes, sir.

Q. Beside the door with the two locks? A. Yes, sir.

Q. Did you try the knob of that door? A. That door was just closed; it wasn't locked.

Q. Well, did you open that door? A. I did not.

Q. Was there anything to prevent you from opening that door? A. Nothing except there was men in that other room.

Q. Well now, you know, don't you, that you have painted a picture to this jury of being locked in a room and restrained of your liberty? 4539

Mr. Cahill: I object to the form.

The Court: Objection sustained.

Q. Well, what was to prevent you from opening the second door and walking into the adjoining room? A. Well, in the first place, I didn't know where it was leading me, and I had no idea of going out except through the same door I came in.

Q. Well, did you open the door that was unlocked to see where it was leading to? A. I did not.

Q. How long have you lived in Phillipsburg? A. Five years.

Q. Have you got a chief of police out there? A. I think so.

Q. What is his name? A. I don't know.

Q. Have you got a police force there? A. I think so.

Q. How long have you lived there? A. Five years.

Q. You only think that you have a police force? A. After all, I have got my business and my work to attend to, and I see officers on the street, and I think all towns and cities have a police force.

4541 Q. Is there a police headquarters in Phillipsburg? A. Yes, sir.

Q. How far from your house is it? A. About a mile.

Q. You have a telephone, have you? A. Yes, sir.

Q. Do you know the telephone number of police headquarters? A. No, sir.

Q. Don't you know how you get the number of police headquarters? A. I would call the exchange to get it.

Q. Did you call the exchange? A. No, I did not.

Q. Did you call the exchange when you saw these men lurking about your place at 4 in the morning? A. No, sir.

Q. Did you call the exchange when you saw the men or man lurking around your home at 11 o'clock at night? A. No, sir.

4542 Q. Did you make any report to the police at any time about these alleged incidents? A. No, sir.

Q. Did you make any written note or memorandum about them? A. No, sir.

Q. When was the first time that you ever related to anybody the incidents concerning a man or men lurking about your home either at 4 in the morning or at 11 o'clock at night? A. When they happened.

Q. When was the first time you ever related that to anybody? A. In April or May of 1937.

Q. Not to the police did you relate it? A. No.

Q. You have a lawyer in Phillipsburg? A. Yes.

Q. Did you relate it to him A. No, sir. I have had no reason to seek out policemen and lawyers in my life.

Q. Not even when——

Mr. Cahill: May she finish?

The Court: Have you finished your answer?

The Witness: I think so. I think I have finished as much as he wants to know.

4544

Q. That is, you never had any communication with any policeman? A. I have never found any great reason to do that. I feel I have a number of employes, all men, and I feel I have ample protection with my employes.

Q. Were your employes near your house at 4 o'clock in the morning when this— A. Oh, yes, sir. My employes are always there at 4 o'clock in the morning.

Q. What are the names of some of your employes that were nearby your house at 4 o'clock in the morning when this incident occurred? A. I don't know what incident you are speaking about.

Q. You don't? A. But at 4 o'clock in the morning I have night loaders and also my road men coming out.

Q. You don't know what incident I am speaking about? A. Well, there were two.

4545

Q. Is that what you say? A. There were two, and I don't know——

Q. At 4 o'clock in the morning, were they? A. No; one was at 11 o'clock and the other at 4.

Q. All right then. There was only one incident at 4 o'clock in the morning? A. No; there was a number at 4 o'clock in the morning.

Q. At 4 in the morning? A. Yes.

Q. Give us the dates. A. During the latter part of April and the first of May, 1937.

Q. Who were your employes who were near by your house on those occasions? A. George Bennett, John Simons, Al Collinge.

Q. Did they live on the premises? A. No.

Q. Well, where does Bennett live? A. Where does Bennett live? About a mile away.

Q. Where did Collinge live? A. About a mile away.

Q. Did any of these men whose names you mentioned live nearer to your house than a mile? A. Yes.

Q. Which one? A. Alfred Collinge. He lived about a
4547 half mile away. John Simons lived about four blocks away.

Q. Did they have telephones? A. Yes.

Q. Well, when you saw this prowler lurking at 4 o'clock in the morning, did you call them? A. Why, they were there.

Q. They were there, were they? A. Yes.

Q. Did they talk to the men? A. No.

Q. Where were they? A. Getting ready to go to work.

Q. Where were you? A. In my office detailing their work.

Q. And they were outside A. My office, home and garage are all one building; and I was in my office and they were getting their trucks ready to go to work in the morning.

4548 Q. Where was the man that you talked about—the stranger—at that moment? A. In the morning it wasn't a man; it was men.

Q. All right; where were the men at 4 o'clock in the morning? A. Across the street from my office.

Q. Where? A. Across the street from my office.

Q. Did you call the attention of your driver to them? A. We all spoke about it.

Q. Did you call the attention of your drivers to those men? A. The men across the street did in no way molest me and there would be no reason for calling the drivers or officers. They were simply parked across the street.

Q. And that is all there was to that? A. That is all there was to that.

Q. Nothing else? A. Not a thing.

Q. No one spoke to you? A. No one. Not at 4 o'clock in the morning, no; no one spoke to me.

Q. You had no conversation with anyone? A. No. It was simply a foreign car each morning that waited until my trucks left and then followed them. There would be no reason to call the police for that reason. They had as 4550
much right on the highway as I did.

Q. Did anyone speak to you at 11 o'clock at night? A. Yes, sir.

Q. On how many occasions? A. One.

Q. Did you call your drivers then? A. No; because I expected my husband in any minute.

Q. By the way, what is your husband's occupation? A. He works for me.

Q. He works for you? A. Yes, sir.

Q. How long have you been married? A. 33 years.

Q. You are the owner of the business, are you? A. Yes, sir.

Q. What does your husband do? A. He drives a truck.

Q. In connection with the business? A. He drives a truck. 4551

Q. Do you pay him a regular salary? A. Yes.

Mr. Cahill: Objected to as immaterial.

The Court: Yes, that is immaterial.

Mr. Murray: Exception.

The Court: It is already answered.

Q. Is this an incorporated business? A. No, sir. I am the sole owner.

Q. And under what name do you operate? A. E. B. Libe.

Q. Is that a trade name? A. Well, I wouldn't know whether it was a trade name or not. I don't know. I started out a long time ago, and called it E. B. Libe, and it has been that ever since.

Q. Now, I asked you before recess whether or not you had talked to anyone representing the Government about your being a witness here, and I think you said on one occasion this week; is that correct? A. I said this morning.

Q. Before this morning did you talk to anyone connected
4552 with the Government? A. I did, but I believe five or six months ago.

Q. At that time were you shown any pictures of these defendants? A. What do you mean these defendants?

Q. Those men sitting over there (indicating). A. I was shown a lot of pictures and asked if I knew any of them and I picked out several men I knew.

Q. Did you see Campbell's picture? A. I don't recall. I don't think I did.

Q. Did you see Larkin's picture? A. I wouldn't recognize it if I did see it.

Q. Now, how long did Campbell talk to you on that occasion that you saw him in the office? A. About five minutes, but I saw him several times after that.

Q. How long did Larkin talk to you? A. I was in his
4551 office three hours, but he was out of it most of the time.

Q. Now, are you connected with any other kind of business besides this trucking business? A. Yes, sir.

Q. Now, when you came to New York in April, 1937, did you come solely for the purpose of meeting Franz? A. I had an office in New York——

Q. Did you? Yes or no, Madam? A. No. I came to New York every day.

Q. On the occasion when you met Campbell did you come for the purpose of meeting Campbell alone? A. I would say yes.

Q. Well now, you have a business in New York, haven't you? A. I did come at that time to New York every day.

Q. You have a business— A. My business was uptown.

Q. You have a business in New York, haven't you? A. No, sir. My business is in Phillipsburg.

Q. Have you got an office in New York? A. No, sir.

Q. Did your business in connection with your trucking company bring you to New York every day during that period? A. No, sir. Part of the time; partly devoted if to another business.

4556

Q. That is what I am asking you: Did you have any other business in New York? A. No, sir; in Phillipsburg and back in Allentown.

Q. Well, did you have an office in New York in connection with the Golden Arrow Bus Line? A. Yes, sir; in 1935 and 1936.

Q. Did you have an office here in 1937? A. I think it was closed around in June of 1937. I don't think I had it after that time.

Q. Well, did you have an office in connection with the Golden Arrow Bus Line in April of 1937? A. I think so.

Q. And May of 1937? A. No, I did not. I did not, no. I had sleeping quarters for my men, but I didn't have an office at that time.

Q. Well, did you come to New York every day from 4557 New Jersey during that period? A. No, sir.

Q. Just a moment, please. On business connected with the Golden Arrow Bus Line? A. No, sir.

Q. Well, what other business brought you to New York outside of this union business that you have spoken about? A. My trucking business. I have always tried to travel where my trucks or buses go. My office is in Phillipsburg. I do all my work in Phillipsburg, but I always try to travel from one end of the line to the other.

Q. Well, there was a time when you didn't do all your work in Phillipsburg in connection with the Golden Arrow Bus Line, wasn't there? A. All my work was done in Phillipsburg.

Q. Did you maintain an office in New York? A. I had a room at the Hotel Dixie.

Q. And you regarded that as an office, didn't you? A. No. I had no books, nothing there.

Q. Did you visit it each day? A. No, I didn't.

Q. Before April, 1937? A. No, not even then. I never at any time——

Q. When is the last time you maintained a room in the
4559 Dixie Hotel in connection with the Golden Arrow Bus Line, if you please? A. Beg pardon?

Q. (Read) A. I think—it was prior to 1937.

Q. Please tell me the month? A. I can't do that unless I look up my books. I had a room there—I had two rooms. I still maintain one, and I can't give you just exactly the time that I gave up the extra room.

Q. Was it your custom to ride in on your truck with your driver each morning? A. No, sir. Sometimes I rode in on the trucks; sometimes I went in on the bus. Sometimes I would drive in.

Q. Well, during April, May and June of 1937, are you able to tell us how many times you rode in on the trucks with your drivers? A. No, I couldn't remember that.

Q. Was it three or four times a week? A. It is all in
4560 my general line of work and I couldn't remember what days I rode in on a truck or what days I came in on the bus.

Q. Well, did you have an average a week in which you rode in on the trucks? A. Did I come in weekly—no. Whenever there was reason for me to come in I would come in with the truck or if I wanted to get into New York early I would come in with the truck.

Q. Well, did you come into New York every day say for six months before April, 1937? A. No, sir, I did not.

Q. How often a week did you come in? A. Probably three or four times a week.

Q. A week? A. Yes.

Q. And when you came in did you go to the Dixie Hotel? A. Oh, no, not at the time I came in.

Q. Did you have other business in New York? A. I was out soliciting work for my trucks.

Q. I see. Now, whom did you solicit work from?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow it.

A. Was there a question? 4562

Mr. Murray: Will you repeat it, please?

Q. (Read.) A. Any of the manufacturers in New York. Must I give their names?

Q. Well, have you got any embarrassment in giving their names?

Mr. Cahill: No, if your Honor please, I object to the statement.

The Court: I sustain the objection to that question.

Mr. Murray: I move to strike out the answer.

The Court: Do you want the names of the persons from whom she solicited? 4563

Mr. Murray: Yes, your Honor.

Mr. Cahill: If your Honor please, may I be heard? In a matter of business unless the Court feels that it is very material to the issue, I do not think that a business person should be required to do that.

The Court: Well, I will sustain the objection for the present.

Mr. Murray: I except.

The Court: There is a distinction between the persons from whom she may have solicited business and the persons with whom she did business during this particular time.

By Mr. Murray.

Q. Well, madam, with whom were you doing business in New York insofar as your trucking venture was concerned in April of 1937? A. I could not give you a list of all the people. I was a common carrier. I can give you a list of a number of them.

4565 Q. Well, have you got some recollection— A. Ingersoll-Rand.

Q. Who? A. Ingersoll-Rand Company.

Mr. Murray: Will you repeat that, please, Mr. Stenographer.

The Witness: Ingersoll-Rand Company.

Q. Where was their place of business, or at least their—

The Court: Where did you make deliveries, if you made any, to them?

The Witness: They are machine manufacturers, and it would be anywhere in New York City. Their office is at Broadway.

4566 The Court: In other words, you made deliveries to their customers?

The Witness: From their plant to their customers.

Q. What kind of merchandise did you cart for that concern? A. Machinery, drills, hammers.

Q. What type of machinery? A. Oh, I don't know. I don't know.

Q. Heavy machinery? A. Yes, heavy and light. Machinery that compresses—machinery that Ingersoll-Rand manufactured.

Q. Well, did you carry machinery that weighed 1,000 pounds? A. Oh yes.

Q. Or 2,000 pounds? A. Yes, and jack bitts that probably weighed 82 pounds.

Q. And do you know where any of those deliveries were made? A. They were made to piers; they were made to different contractors. I know that we hauled up a lot to Radio City. The air conditioning material, I know that, because there was times when there was penalties on them, and I had to go in with the truck and see that they made 4568
the delivery on time.

Q. Well, did you ever go in on a truck and meet Franz when those deliveries were being made? A. Oh, yes.

Q. Did you meet Franz on any occasion when delivery of machinery, say, that weighed 2,000 pounds was made? A. I would not remember that either.

Q. Well, did you see Franz assisting in taking the machinery off your truck? A. I would not know that. I would ride along until they got to the building, and as long as I knew they got there on time I was satisfied there would be no penalty, and I would leave them.

Q. Well, did you ever see Franz taking or assisting in taking merchandise off your truck for delivery? A. No, sir, I did not. No, sir, I never did.

Q. Did you ever see Stratton do that? A. No, sir. 4569

Q. Did you ever see Marone do that? A. No, sir.

Q. Now, when did you first meet Franz? A. About, I would say, 10 or 11 years ago.

Q. Franz? A. Yes.

Q. Did you know Franz before April of 1937? A. I met him and went to his warehouse for some machinery for Binni Smith about 11 years ago, and I didn't know he was the same man until he told me so after he was on my truck.

Q. Now, 11 years ago what business relations did you have with Franz? A. Not any. We went to his warehouse.

Q. Who went to his warehouse? A. My trucks and myself.

Q. Where was the warehouse? A. On Water Street.

Q. Did Franz do any work for you 11 years ago? A. No, sir. Binni Smith had some merchandise stored in a warehouse that I believe belonged to him, and I hauled for Binni Smith, and we picked up the merchandise from there.

Q. Well now, when you met Franz in the spring of 1937 for the first time in New York did you recognize that— A. No, I didn't know him. He told me who he was.

4571 Q. Will you wait, lady, until I finish the question? A. Yes.

Q. When you met Franz in the spring of 1937 in New York did you recognize him as the man who had had the warehouse 11 years before? A. No, sir.

Q. But you had a conversation with him, did you? A. Later on he told me who he was.

Q. Yes; and then did you recognize him? A. No, I did not.

Q. Well, during the period——

By the Court.

Q. Well, did you remember the incident— A. Oh, yes, I remembered going to his warehouse.

4572 Q. —of having gone to his warehouse? A. Oh, yes, I remembered it.

By Mr. Murray.

Q. And you talked to Franz about that, didn't you? A. He told me about it.

Q. And when you met Franz for the first time over here in New York in the spring of 1937 did you have a friendly conversation with him? A. No, I did not.

Q. You did not? A. No, I did not.

Q. The conversation was unfriendly, was it? A. Very.

Q. Where did you have that first conversation with Franz in New York? A. Up at the Hotel Dixie.

Q. Did you meet him down at the Holland Tunnel? A. Yes, sir.

Q. Isn't that the first time you testified this morning that you met Franz in New York in the spring— A. Down at the Holland Tunnel?

Q. Yes; did you? A. Yes, sir.

Q. Did you have a conversation with him at the Holland Tunnel or outside the tunnel? A. Now, it is so long gone by that I won't be sure whether the first time I met him 4574
was at the Holland Tunnel or up at my office at the Dixie, I don't know.

Q. Do you recollect in regard to that what you testified to this morning? I mean in relation to your first meeting with Franz? A. Well, I don't know just what you are trying to have me say.

Q. I don't want you to say anything, lady, except to answer the question. A. The truth, and that is all I am trying to say.

Q. All right. A. But I can't remember dates. I know that I saw Franz after he got on my truck; after he called me, I saw him up at the Hotel Dixie and I also met him downtown.

Mr. Murray: May I have the answer stricken 4575
out as not responsive?

The Court: Strike it out.

Mr. Murray: May I have the question read?

The Court: Yes.

(Question read.)

Q. Do you recollect that you took your place on the witness stand this morning about a quarter of eleven? A. Yes, sir.

Q. Do you recollect the district attorney interrogating you about a meeting with Franz? A. Yes, sir.

Q. Do you recollect now what you told the district attorney about two hours ago as to where you first met Franz? A. Yes, sir.

Q. What did you tell him? A. I said I met Franz up at the hotel. The hotel if was. He came up there.

Q. You did not say that you met him outside the Holland Tunnel, did you? A. I met him at both places.

Q. Now, madam, I am addressing my question as to the first time you saw Franz in New York in the spring of 1937. A. It was at the Holland Tunnel. And then up at the Hotel Dixie.

4577 Q. Well, when you testified this morning before a recess, do you recall where you told the district attorney you first met him? A. Might I have time to think a minute?

The Court: Beg pardon?

The Witness: Might I have time to think a minute?

The Court: Yes, take your time.

The Witness: All right.

Q. Beg pardon? A. I think I can remember now.

Q. Now will you be good enough to give the jury the benefit of your recollection? A. Yes. I think the first time Franz came up to the hotel. I think that is correct. They

4578 were all in a very short period——

The Court: No, that is enough.

Q. With that in your mind, do you now say you met Franz at the Holland Tunnel before he went to the Dixie Hotel? A. I did not meet him at both places the same day. I talked to him over the telephone and then he came up to the hotel.

Q. On your first visit to New York when you say someone accosted you as you got outside the Holland Tunnel, who was that person? A. Mr. Franz.

Q. Well, perhaps I am mistaken, madam, but I understood you to say that you met Franz for the first time in New York at the Dixie Hotel. A. Well, it could be either way. It was all in a short period and I would not say it was the first time. As I say, I met Franz years ago. But I would not say whether it was either one or the other place the first time I met him. It was a long time ago.

Mr. Murray: May I have the answer stricken out, if your Honor please? 4580

Mr. Cahill: I submit it is responsive.

The Court: Denied.

Q. Did you for the first time in the spring of 1937 see Franz outside the Holland Tunnel in New York? A. I met Franz outside the Holland Tunnel and also at the Hotel Dixie.

Q. Where did you meet him first? A. As well as I can recollect, at the Hotel Dixie.

Q. Now, did you testify before a recess— A. I don't remember that because I didn't think it was material——

Q. Lady, may I ask——

The Court: Just a moment. Strike out the answer. Listen to the question. 4581

Mr. Murray: May I have the question read as far as I have gone?

The Court: Yes.

(Question read.)

Q. —that you met someone outside the Holland Tunnel on a trip to New York in the spring of 1937? A. Yes, sir, I did.

Q. Who was that person? A. Ed Franz.

Q. Now, is that the first time you saw Franz in New York since your meeting 11 years before? A. Well, I am just trying to tell you. The dates were so close and they were probably a day or two apart, and I would not say whether that—there was so many things happened and at that time I wouldn't say whether that was the first—I feel and believe that the hotel—after his conversation to me over the telephone, I feel that he came the following Saturday to the hotel. Now, I wouldn't tell you or try to tell you which one of those dates were correct. It is so long ago.

4583 Q. All right. A. But he met me coming through the tunnel, and he also came up to the hotel.

Q. Did he meet you coming through the tunnel before he met you in the Dixie Hotel? A. I feel he did not. I feel the Dixie Hotel was the first place, but I could be mistaken in that because it is a long time ago.

Q. Well, did someone meet you outside the Holland Tunnel on one occasion when you came— A. On several occasions, yes, sir.

Mr. Murray: May I have the answer stricken out?

The Court: Strike out the answer until the question is finished.

Now, wait until counsel finishes his question and then answer it.

4584 Mr. Murray: May I have the question read as far as it has gone?

The Court: Yes.

(Question read.)

Q. —to New York before you met Franz? A. Did someone meet me?

Mr. Murray: May I have the question read, if your Honor please?

The Court: She can repeat to herself if she wants to.

Mr. Murray: Well, I was helping her. I did not think she got it.

The Court: If she wants the stenographer to read it, I will so direct, or if she wants to cogitate by herself, she may do that too.

The Witness: May we have the stenographer read it?

The Court: Yes. Will you read that, Mr. Reporter?

(Entire question read.)

The Witness: None other than Franz. 4586

Q. In other words, did anyone stop you outside the Holland Tunnnel before you went to meet Franz in the Hotel Dixie or before he went to meet you there? A. Well, I am trying to remember whether it was before he came up there or after. I don't know. I am not sure of the two dates. I met him both times, or he came to see me both times, but which one was first—they were very close dates—which one was first, I feel I could not be sure of.

Q. Did anyone besides Franz talk to you outside the Holland Tunnel before Franz met you in the Hotel Dixie? A. You said anyone besides Franz?

Q. Yes. A. No, sir. I have talked to no one outside of Franz on the street or in the hotel. 4587

Q. So then is it correct that when you came in from New Jersey some time in April of 1937, the first face to face conversation you had with Franz was in your room in the Dixie Hotel? A. I believe I speak correctly when I say that, but I could be mistaken; it could have been the day I met him on the street downtown. There were two occasions in a very few days, and I would not now be sure which one it was, whether it was the first time I met him downtown or the first time I met him up at the hotel.

Q. Well, where did you meet him downtown? A. Down on Varick Street.

Q. Was that the first time you talked to him in New York?

Mr. Cahill: I will object to it as repetitious, if your Honor please. We have had this now for a half hour.

The Court: I think, Mr. Murray, you have pursued that question far enough. The witness had indicated she saw Franz once at least at the Dixie Hotel and that she met him as she came out of the tunnel, and the jury have all the facts, and they can
4589 determine which was the first occasion that she saw Franz. I will sustain the objection.

Mr. Murray: Exception.

Q. Did you talk to any truck driver besides Franz before you signed this contract, Exhibit 52? A. Yes, sir; Stratton too.

Q. All right. Now, when did you talk to Stratton? A. Prior to signing that.

Q. And was that after you had first talked to Franz? A. Franz and Stratton were both together.

Q. And on the occasions that you——

The Court: Now, just a moment.

4590 *By the Court.*

Q. Do you mean Franz and Stratton were both together on the occasion when you had the talk with Stratton before you signed the contract? A. Yes, sir, they were both together. They both came up to the hotel and they were both at the street or at Varick Street.

Q. Well, that is the second time that you had seen Franz at the hotel? A. No, Franz and Stratton both came up to the hotel.

Q. On the first occasion? A. Yes, and Franz and Stratton both met me here at Varick Street. They were in Stratton's car.

By Mr. Murray.

Q. Well, did Stratton and Franz meet you in the Dixie Hotel on more than one occasion? A. Oh yes, they came up there a number of times.

Q. And was that before you signed this contract, Exhibit 52? A. They were up there at least once before that was signed, yes, sir.

Q. And after it was signed did they see you in the Dixie Hotel again? A. Yes, sir. 4592

Q. And on how many occasions? A. Oh, I couldn't tell you. They would sometimes—they would come in on a Saturday afternoon to see me. I don't know how many times.

Q. Well, did they come there by appointment with you? A. Oh no.

Q. Did they advise you in advance that they were coming to see you? A. No, sir.

Q. Well, did they come to see you in the Dixie Hotel after May 12 of 1937— A. Yes, sir.

Q. —which is the date that the contract purports to have been signed? A. Yes, sir, they did.

Q. And how long did they continue after that date to come and see you in the Dixie Hotel? A. Oh, I couldn't 4593 tell you that.

Q. Well, did they come there in, say, May of 1938? A. I don't think so.

Q. Did they come there, say, in December of 1937? A. Yes, I would say that.

Q. Now would you be good enough to tell me the last time before June 1, 1938, that you had any conversation with Stratton? A. I couldn't tell you that either. I don't

know. I couldn't tell you. I called him in on several occasions. They were doing work——

Q. Now, now, just a minute, lady.

Mr. Murray: I move to strike that out.

The Court: Strike it out. Put your question.

Q. Can you tell us the last time you spoke to Stratton? A. No, I could not.

Q. Was it some time before June 1, 1938? A. I couldn't tell you that. Don't know. I couldn't remember the last date I spoke to that man.

4595 Q. Now, you testified here before recess that you had talked to Mr. Campbell in the union rooms? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Are you able now to fix for me the dates that you held that conversation with Mr. Campbell? A. No, sir; it was some time during April.

Q. Do you remember whether it was the early part of April or the latter part of April? A. I couldn't even tell you that. It was some time during April, but I couldn't tell you just the exact dates; I don't know.

Q. Now, you have testified, have you not, that on that occasion Franz accompanied you to the union rooms of Local 807? A. Yes, sir.

Q. That is your testimony? A. Yes, sir.

Q. And was that after you had had a conversation with
4596 Franz in the Hotel Dixie? A. Oh, they came down from the Hotel Dixie in their car to see Mr. Campbell, from the hotel.

Mr. Murray: I move to strike out the answer as not responsive.

Mr. Cahill: I submit it is responsive, your Honor.

The Court: Denied.

Q. Had you talked to Franz in the Hotel Dixie before Franz accompanied you to Local 807 at which time you say that you talked to Mr. Campbell? A. Yes, sir.

Q. And had you seen Franz on more than one occasion before you talked to Mr. Campbell? A. Yes, sir.

Q. Do you know about how many times it was? A. I think twice.

Q. And on those two occasions was Mr. Stratton with Mr. Franz? A. Yes, sir.

Q. Now, on the day that you went to Local 807 with Mr. Franz, did you see anyone there in Local 807 union rooms outside of Mr. Campbell? A. There were a number of men in the room; a number of men; but I would not 4598
recognize them.

Q. Was that the same room where you saw Mr. Campbell that the other gentleman subsequently tried to slap you in the face with an envelope? A. I think it was. It was quite crowded the day I was in to see Mr. Campbell. There were a lot of people in there.

Q. Were they in the same room with Mr. Campbell? A. Yes, there was a lot of people in there that day.

Q. Did you see anyone there that was introduced to you as the president of the union? A. No, sir.

Q. Or as the secretary of the union? A. I don't even remember being introduced to anyone that day except Mr. Campbell.

Q. Well, who introduced you to Mr. Campbell? A. Ed 4599
Franz.

Q. Now, would you be good enough to tell us in that introduction to Mr. Campbell what Mr. Franz said? A. When he introduced me to Mr. Campbell?

Q. Yes. A. No, I couldn't tell you that.

Mr. Murray: Does your Honor want to suspend?

The Court: No, go right along for a moment.

The Witness: I couldn't tell you that.

Q. Well, did Franz say in substance that you desired to sign a contract with the union? A. I don't remember what Franz said to me when he took me in there at that time.

The Court: We will adjourn to five minutes past two.

(Recess to 2.05 P. M.)

— ———

AFTER NOON SESSION.

4601 (The roll call of the defendants and all present.)

EMILY B. LIBE resumed the stand and further testified as follows:

Cross-examination (continued) by Mr. Murray.

Q. Well, now, madam, in these talks that you had with Franz in the Dixie Hotel or elsewhere and before you went to the union room and saw Mr. Campbell, did Franz explain to you that the union desired that you should sign a contract? A. In the beginning he did not.

Q. Well, at any time before you went to the union room did he explain? A. He told me that the union wanted me to sign a contract.

4602 Q. Well, you had a talk with Franz concerning the contract, didn't you? A. I did not, no.

Q. Did you ask him what the terms of the contract were? A. No. I told him I didn't see why I had to sign a contract.

Q. Well, did you talk to him about what the terms of a tentative contract would be? A. No, I did not.

Q. Did you ask him what kind of contract the union expected you to sign? A. I don't think I did.

Q. Well, when you went and saw Mr. Campbell for the first time did he explain to you the type of contract that the union wanted? A. He was very busy; he had very little time for me.

Mr. Murray: May I have the answer stricken out?

The Court: Strike it out. Repeat the question.

(Question read.)

The Court: Do you understand the question, Mrs. Libe?

The Witness: Yes, sir.

4604

A. He didn't explain. He gave me a contract. He gave me a contract.

Q. Did he give you a copy of the contract, Exhibit 52. that you subsequently signed? A. He gave me a sheet such as that, yes.

Q. Then did you take the contract home with you? A. Yes, sir.

Q. And did you read it over? A. Yes, sir.

Q. And when you read it over did you understand what the terms of the contract were? A. Yes, I did, but I didn't see how I could pay them.

Q. But you understood at that time what the contract called for so far as terms were concerned, did you not? A. Yes, sir, that I would have an extra man on my trucks in New York; every truck that went in. 4605

Q. Now, when you returned to the union rooms some weeks later you then had full information, did you not, as to the terms of this contract? A. I did not.

Q. Well, you had read it, hadn't you? A. Well, I had read it; but when I hire a man I hire him for a day, not for an hour. I am accustomed to hiring a man for a day; not for an hour.

Q. You had read that contract, hadn't you? A. Yes.

Q. And when you went to the union rooms subsequently didn't you know the terms of the contract? A. No, I did not know whether it meant for a day or for an hour. If my truck was in New York for an hour I felt that that same man could work on another truck that was in New York for an hour, and that is what I tried to find out from the union.

Q. When you got to the union rooms did you discuss any of the terms of the contract on that second visit to the union? A. I tried to. That is what made Mr. Larkin angry.

4607 Q. Well, tell us now, if you please, what discussion you say made Mr. Larkin angry? A. When I tried to find out what—how many hours a man would work or where I could place him or who I could hire, if I put a man on a truck in New York as they asked.

Q. You say that made Mr. Larkin angry? A. Yes.

Q. Well, did you tell Mr. Larkin during that discussion that you had already employed Franz? A. He knew it. I had never employed——

Mr. Murray: I move to strike it out.

The Court: Strike out the answer. Repeat the question. The question is not what Mr. Larkin knew. The question is what you told him.

4608 Q. (Read.) A. I had not employed anyone.

Mr. Murray: May I have the answer stricken out, if your Honor please.

The Court: Strike it out. Did you tell Mr. Larkin anything?

The Witness: I went in to ask Mr. Larkin what to do about these men that were on my trucks that I was paying, to find if I could—if it was a union

rule in New York and there were men placed on the trucks to unload my loads in New York, if I could interview and hire a man if I wanted and how many hours he would be allowed to work, or whether he would be allowed to unload one or two trucks.

Q. Did you tell Mr. Larkin at that time, I ask you again, that you had already employed Mr. Franz? A. I had not employed Mr. Franz, and I don't think I discussed it at all with Mr. Larkin.

Q. All right. Was Mr. Franz working on your trucks before you talked to Mr. Larkin? A. Yes, sir. 4610

Q. Were you paying Mr. Franz? A. Yes, sir.

Q. Did you tell that to Mr. Larkin? A. No, sir.

Q. Did you discuss Franz at all with Larkin? A. No, sir.

Q. Did you tell Larkin that you had had a number of discussions with Franz? A. I had not had a number of discussions with Franz. I think I had only seen Franz probably three times at that time and I had no discussion with him except that I did not want him on my truck.

Mr. Murray: I move to strike out the answer as not responsive.

The Court: Strike it out. Listen to the question.

4611

Q. (Read.) A. No.

Q. Had you had a number of discussions with Franz before you talked to Larkin? A. I had seen Franz about——

The Court: No, no, strike out the answer. You can answer that very simply. Had you had talks with Franz before you met or before you saw Mr. Larkin?

The Witness: Well, I would not like to say talks with him.

The Court: Well, conversations.

The Witness: Yes.

The Court: If you make any distinction between a talk and a conversation.

Q. And when you went to the union room and met Mr. Larkin did you then have a copy of this contract that you subsequently signed, Exhibit 52, with you? A. No, I did not.

Q. Did you bring that contract from Jersey to the union
4613 room? A. No, no, I did not.

Q. Well, did you discuss the signing of this contract on that occasion when you met Larkin in the union room with anybody but Larkin? A. I am sure I did not.

Q. Now, when you met Mr. Campbell on the first occasion, Mr. Campbell, you say, gave you a copy of the contract? A. Yes.

Q. At that time did you discuss the terms of the contract with Mr. Larkin— A. No.

Q. I mean Mr. Campbell, rather. A. No.

Q. Now will you be good enough to tell us what Mr. Campbell said to you on that first occasion when you visited the union rooms? A. He gave me a copy and told me I would have to sign up with the union.

Q. That was about what he said, wasn't it? A. Yes.

4614 Q. And as I understand that conversation lasted less than five minutes? A. Yes, it was a very short period of time.

Q. And then you left with a copy of the contract in your possession, is that right? A. Yes, sir.

Q. Now, did you ever again visit the union rooms—I mean before June, 1938—in New York? A. I have been in the union rooms three times.

Q. All right. Now, about when was the last time that you were in the union rooms? A. I can't give you the exact date. I don't know that; I think it was some time in 1938; September, I believe, 1938; September or October.

Q. Was it after June of 1938? A. I think it was.

Q. Now, how many trucks between May of 1937 and June of 1938 did Franz work on— A. I couldn't tell you that——

Q. (Continuing) Trucks, I mean, that belonged to you? A. I couldn't tell you that, I don't know.

Q. Do you know whether or not he worked as many as four trucks a day? A. No, I know that he did not.

Q. Were there any days when you had as many as four 4616
trucks in New York operating here? A. No, sir.

Q. Were there any days between the signing of this contract and June of 1938 that you had three trucks a day operating in New York? A. Yes, sir.

Q. Do you know whether or not Franz loaded and unloaded those three trucks? A. I can't tell you that. I have a brother that is in charge of the New York work, and I couldn't tell you that.

Q. What is your brother's name? A. Collenge.

Q. Has your husband got anything to do with the New York work? A. No, sir.

Q. Does he come to New York on trips? A. No, sir, never.

Q. Does he truck some place else? A. No, sir.

Q. He drives a truck, doesn't he? A. Locally in 4617
Phillipsburg; no place else.

Q. Now, do you know any places that your trucks after they had discharged their loads in New York reloaded to take back merchandise to Jersey? A. Do I know any place?

Q. Yes. A. Yes.

Q. Where? What places in particular? A. United States Mint, Hudson Motors, Ingersoll-Rand, and different piers in New York.

Q. Now, were the reloads trucked back from New York to New Jersey? A. They were usually empty that were taken in for J. T. Baker, empty chemicals, carboys, and loads of chemicals taken back to J. T. Baker.

Q. Now, at that time in May of 1937 did you employ union help? A. Yes, sir.

Q. What union did your help belong to? A. I believed Perth Amboy.

Q. Do you know what number of local that is? A. No, I do not.

Q. Do you know how many of your truck drivers belonged to a local— A. I didn't know that.

4619 Q. Do you know that any of them did? A. Yes, I know that they did.

Q. Well, will you please give me the name of one who did? A. Evelyn Collenge, Alfred Collenge; I know them because they are relatives of mine.

Q. What relation do they bear to you? A. A brother and a nephew.

Q. Do you know any other truck driver who belonged to a union? A. Edward Stem, Abraham Johnson, William Obitts.

Q. Are those drivers still in your employ? A. Yes, sir.

Q. All of them? A. Yes, sir.

Q. Do you know the name of any driver who drove a truck to New York for you on which Franz worked? A. No, I would not know, as my brother when he brings

4620 trucks into New York, he details them as he wants to. I haven't time to do that myself.

Q. Well, is it true that when the trucks get to New York your brother gives the directions to the truck drivers? A. No, he details it from the office in Phillipsburg.

Q. Well, is his office in your house? A. He is a truck driver. My brother is a truck driver. He is not an executive. He is a truck driver.

Q. Do you know whether or not before the trucks reached New York, say, after May, 1937, and up to June, 1938, that your brother was in the habit of sending telegrams to Franz to meet the trucks in New York? A. We did that, yes. We did. We did that to save a day's pay if we did not have any trucks in.

Mr. Murray: Now I move to strike the answer out, if your Honor please.

The Court: Strike it out.

Q. Is your answer "Yes"? A. Yes.

Q. And on each occasion when your trucks were coming into New York did you send word to Franz either by telegram or otherwise to meet the trucks? A. Not to meet them—how many trucks we had in New York—because there was two men working and there was many days we had but one truck in. 4622

Q. Well, if a truck did not come in, did Franz work? A. If a truck did not come in?

Q. Yes. A. That is more than I can tell you about, whether he got paid or not; I don't know.

Q. Well, did you ever make any inquiry of that? A. Yes, I did.

Q. Do you keep books? A. I can't keep my books and be out on the road.

The Court: No, what he means—— 4623

The Witness: Yes, I do keep books.

The Court: Whether books are kept in your business.

The Witness: Yes, there are; there are books kept.

The Court: But you do not do the actual bookkeeping?

The Witness: No, I do not do the actual bookkeeping.

Q. Well, you have a general idea of what your books of account contain? A. Yes.

Q. Haven't you? A. Yes.

Q. Now, from your idea of what your books of account contain, are you able to tell us whether or not when you did not have trucks coming to New York, that Franz worked for you or got paid? A. Oh, I misunderstood your question. We always have trucks into New York every day.

Q. Every day in the week? A. Always have a truck in New York every day in the week except holidays.

Q. Well, do you know of your own knowledge that
4625 when Franz worked on your trucks he worked eight hours a day? A. No, he did not work eight hours a day.

Q. Do you know what time he met your trucks in the morning? A. Yes.

Q. What time? A. Between ten and twelve.

Q. Never at 8 o'clock in the morning? A. Oh, yes, some mornings at eight.

Q. Now, how long a run was it from Phillipsburg to New York? A. How long a run?

Q. Yes. A. About five hours. They make stops in Jersey.

Q. And when would your truck driver, when he arrived here in the morning, ordinarily leave Phillipsburg? A. About between 4.30 and 5 o'clock.

Q. In the morning? A. Yes, sir.

4626 Q. Well, didn't some of the piers open at 8 o'clock in the morning according to your knowledge? A. Yes, sir, they do.

Q. Don't you have deliveries at 8 o'clock in the morning? A. Not very many.

Q. Did you ever have deliveries at 8 o'clock in the morning? A. Yes, sir, we had.

Q. Now, on this five-hour run after a truck left New Jersey about half-past four or five in the morning, what

time ordinarily would it return back to New Jersey? A. About seven, half-past seven at night.

Q. After Franz began to work on your trucks did you send a helper along? A. Yes, sir.

Q. Did you always have a helper on the truck after Franz went to work for you? A. Yes, sir, I had a man come in in the morning to drive the truck in and he went home on the bus in the afternoon, and a man came in at noontime to drive the truck home.

Q. Well, when the man left, when the driver of the truck left your place in New Jersey about half-past four or five in the morning, did he leave alone or with a helper? A. He left alone. He left alone. 4628

Q. And then you say that he would take a bus back to Phillipsburg in the afternoon? A. Yes, sir.

Q. Before his deliveries were completed? A. Yes, sir, because there was another man went down on the noontime bus and took his place and brought the truck home.

Q. You mean left Phillipsburg at noontime? A. Just got into New York at 2 o'clock. He left Phillipsburg at 11.30 and got into New York at 2 o'clock and would meet the truck, and the other man would quit and take the 4.30 or 4 o'clock bus home.

Q. Well, would the other man quit at 12 o'clock and return to Phillpsburg? A. Well, no.

Q. Would he wait until the driver came from Phillipsburg? A. Oh, yes, he would wait until the driver came from Phillipsburg. 4629

Q. Isn't it a fact that Franz drove the truck and made the deliveries alone after your driver started to Phillipsburg, started back to Phillipsburg at noon? A. Never; never.

Q. Are you sure of that? A. I am quite sure of that because my driver couldn't get——

Q. Never mind the "because," please.

The Court: No. After "quite sure" strike out.

4630 Q. Well, did you ever have any discussion with Franz about taking care of the truck and making deliveries until the driver arrived from Phillipsburg? A. What would the other driver be doing?

Mr. Murray: May I have the answer stricken out, if your Honor please?

The Court: Yes, strike it out. Counsel is not under examination.

A. Well, I have a driver on the truck and he is a driver and helps, and he has the orders from the office. I don't know why or what I could do with a man that was down
4631 here that had no orders for him to keep on going; he would not know what to do. So therefore it is necessary for the one driver to wait for the other to carry out my orders.

Mr. Murray: May I have that stricken out, if your Honor please?

The Court: Let me hear the question.

(Question read.)

The Court: Strike out the answer.

The Witness: No, I never had any.

The Court: The answer is no. Strike out after "No."

Q. Does your husband hold a union card? A. No.

4632 Q. Does he get the same wages as the other truck drivers?

Mr. Cahill: I object to it as immaterial.

The Court: Sustained.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

The Court: Witness excused. Call the next witness.

(Witness excused.)

CARLTON C. HOOKS, recalled, testified further as follows:

Cross-examination (continued) by Mr. Murray.

Q. Now, can you tell us when you first met Edward Weinheimer? A. No, sir, I can't.

Q. Do you know what month it was? A. No, sir.

Q. Do you know what was said if there was any talk between you and Weinheimer when you first met him? A. No, sir.

Q. Well, do you remember testifying here the other day on your direct examination, which means questions asked by the District Attorney? A. Yes, sir.

4634

Q. Do you remember whether or not you told the District Attorney when you first met Weinheimer? A. I am not positive of that fact, but I think that I told him the first time that I actually remembered seeing him was at 304 Spring Street.

Q. Well, do you recollect whether you told the District Attorney when it was that you did see him? A. No, sir.

Q. Have you got any recollection now as to when you first saw Edward Weinheimer? A. No, sir.

Q. Have you any recollection now as to whether or not you told the District Attorney when you were examined by him as to the time when you first met Weinheimer? A. No, sir.

Q. Well, let me ask you: Did you tell the District Attorney on direct examination that you met Weinheimer in 4635
September of 1937 and up to February of 1938? A. Yes, sir.

Q. Is that what you told him? A. Yes, sir.

Q. Did you remember that when I asked you and before I refreshed your recollection? A. No, sir.

Q. Did it skip your memory? A. No, sir.

Q. Now, before you took the witness stand the other day, did you discuss the case with anyone representing the Government? A. Yes, sir.

Q. Whom did you discuss it with? A. With the Government attorney.

Q. Did you talk to anyone connected with the Federal Bureau of Investigation? A. Yes, sir.

Q. With whom? A. I don't remember the gentleman's name.

Mr. Murray: Mr. Kennedy stand up, please.

Mr. Cahill: He is not here. He will be back in a minute, though.

Q. Was it the gentleman that you saw sitting at this table with Government counsel when you testified the other day? A. I don't remember. I don't remember his face.

4637

Q. Well, could it have been that you discussed this matter, this case or your testimony with Mr. Kennedy, or rather with someone that represented himself as being connected with the Federal Bureau of Investigation?

Mr. Cahill: I will object to the form of the question.

Mr. Murray: All right. I will withdraw it, if your Honor please. I realize it is complex.

The Court: Withdrawn.

Q. You say you did discuss the matter with someone who represented himself as being connected with the Federal Bureau of Investigation, is that correct? A. Yes, sir.

4638

Q. Did you discuss the matter with more than one person who represented himself as being connected with the Federal Bureau of Investigation? A. I am not positive on that question—on the answer. I talked with someone in High Point in North Carolina, and to someone in Philadelphia. I don't remember whether it was the same man or separate men.

Q. Well, did the man that you talked to in High Point give you his name? A. Yes, sir.

Q. What was his name? A. I don't remember.

Q. How long did this man talk to you in High Point, North Carolina? A. For approximately an hour.

Q. How long did you talk to Jakakas? A. With whom?

Q. Jakākas, or Jąkākas, whatever it is. A. I don't know.

Q. Where did you first ever meet Jakakas? A. I think that the first time I saw Jakakas was at 516 West 25th Street.

Q. Do you know when that was? A. Either December of 1936 or February—or the first three months in 1937.

Q. Was it before December, 1936? A. It could have been.

Q. Was it? A. I wouldn't say definitely, no, sir. 4640

Q. Well, Mr. Hooks, is your recollection at this time such that you can give me dates of the various conversations that you related on your direct examination? A. Not the dates, no, sir.

Q. Or the places? A. Yes.

Q. And the persons? A. Part of them.

Q. Now, before you took the witness stand here the other day were you shown the pictures of any of these defendants? A. Yes, sir.

Q. Whose pictures were you shown? A. All of them.

Q. Pardon? A. All of them.

Q. Were you shown the picture of Edward Weinheimer? A. Yes, sir.

Q. When was that? A. That was on Friday of last week.

Q. Do you recollect when you took the witness stand to 4641 testify in this case what day it was? A. Tuesday.

Q. Had you seen the picture of Edward Weinheimer at any time before Friday of last week? A. No, sir.

Q. Pardon? A. No, sir.

Q. No, sir? A. No, sir.

Q. Where were you when you were shown that picture? A. In the Government counsel's office.

Q. Was the gentleman who represented himself as being connected with the Federal Bureau of Investigation present at that time? A. No, sir.

Q. Did you see that gentleman at all last Friday? A. Not to my knowledge, no, sir; I wouldn't recognize him if he walked in front of me now.

Q. Can you tell us on how many occasions you talked to him? A. Either once or twice.

Q. Was that in New York? A. No, sir.

Q. Did you talk to any Federal Bureau of Investigation man, any member of the Federal Bureau of Investigation, so far as you know, in New York, concerning this case?

4643 A. At what time?

Q. At any time. A. Not unless it was during the Grand Jury indictment.

Q. Do you know when that was? A. You informed me that it was April of 1938.

Q. Well, do you know whether or not it was Mr. Kennedy that you talked to on that occasion? A. No, sir.

Q. Pardon? A. I do not.

Q. Now, you say you believe that you met Jakākas or Jakākas, whatever his name is, at West 16th Street? A. West 25th Street.

Q. 516 West 25th Street? A. Yes, sir.

Q. Do you know when that was? A. Between the months of December and March; December of 1936 and March of 1937.

4644 Q. You mean that you saw him in December? A. Some time during that period.

Q. It might have been in December? A. Yes, sir.

Q. Or the intervening months up to March, is that correct? A. Yes, sir.

Q. Can you be any more precise in fixing the time when you did see him?

Mr. Cahill: Objected to on the ground that it has been asked and answered three times.

The Court: Overruled.

A. No, sir.

Q. Do you know how long Jakakas was in your presence on any occasion when you saw him? A. No, sir.

Q. Do you know whether or not it was less than an hour? A. Usually, yes.

Q. A matter of minutes? A. Yes.

Q. When did you first see William Simpson? A. I don't know.

Q. Where did you see him? A. I think the first time 4646
that I saw him was at 304 Spring Street.

Q. Do you know whether that was in December of 1936 or some time in 1937, or in 1938 up to June? A. It would have been the latter part of 1937 or the early part of 1938.

Q. Well, is your contention of the latter part of 1937 the month of December, 1937? A. The last three months or the first three months of the other.

Q. Is that as definite as you can make it? A. Yes, sir.

Q. What conversation did you have with Simpson if any? A. In regard to putting him or some other Local 807 man on the truck for unloading or loading.

Q. Well now, did you testify the other day that you had a conversation with Simpson? A. I don't remember.

Q. Did you meet George Needelmann? A. I wasn't in- 4647
troduced to him, no.

Q. Did you ever talk to him? A. Yes.

Q. When did you talk to him? A. I don't know.

Q. Do you know what year? A. During the last three months of 1937 or the first three months of 1938.

Q. Can you fix the time any more precisely? A. No, sir.

Q. You realize, don't you, you are giving us a latitude of six months, is that right? A. Yes, sir.

Q. And you can't do any better for us? A. No, sir.

Q. Did you have a conversation with Needelmann when you first met him? A. Yes.

Q. Where was that conversation had? A. 304 Spring Street.

Q. Was there any one present when you talked to Needelmann? A. Yes, sir.

Q. Who? A. I don't know their names.

Q. Was there a man named Reichler there? A. Might have been.

Q. What was the conversation with Needelmann? A. In regard to unloading and loading the truck.

Q. Well, what was the conversation, if you will let us
4649 have it please? A. Wanting us to put a Local 807 man on the truck for the purpose of unloading and loading.

Q. Is that all that was said at that time? A. That is all I remember just now.

Q. When did you first meet Mr. Campbell? A. December of 1936.

Q. Did you have a talk with him? A. Yes, sir.

Q. Where? A. 516 West 25th Street.

The Court: Haven't we been over that before this afternoon?

Mr. Murray: I was going to something else, if your Honor please.

The Court: Well, proceed.

4650 Q. Did Campbell tell you that it was up to you, that you could sign a union contract or not, just as you liked? A. No, sir.

Q. Are you sure he didn't say that to you? A. He said it was necessary that we do sign the contract, and after I pointed out to him our regularity coming to New York we decided to dispense with signing the contract for the present and that we would get to it later.

Q. Is that the substance of the conversation you had with Campbell? A. That is part of it.

Q. Is that the substance of it? A. Yes.

Q. Do you remember whether or not you met Campbell after that? A. I didn't meet Campbell after that. I talked to him over the telephone.

Q. But that was the last time you saw him face to face? A. To my knowledge, yes.

Q. And that was the last time you had a conversation face to face? A. Yes.

Q. What you just told us was the substance of the conversation, is that right? A. Yes.

Mr. Murray: That is all. 4652

The Court: Any redirect?

Mr. Ennis: No redirect.

The Court: Witness excused. Next witness.

Mr. Murray: I wanted to have Mr. Kennedy present before the witness left.

The Court: Well, where is Mr. Kennedy?

Mr. Marks: Very likely in my office, your Honor.

The Court: All right. Let the witness remain outside. Will you call up Mr. Kennedy and see if he is available?

Mr. Cahill: Yes, we will, your Honor.

VINCENT ROBBINS, residing at Gibbon Street, Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows: 4653

Direct examination by Mr. Marks.

Q. Mr. Robbins, will you keep your voice up so we can all hear you? A. Yes.

Q. Where were you employed in the forepart of 1937? A. R. E. Stiles.

Q. Were you a truck driver? A. Right.

Q. Where was Stiles located? A. Broadway, Salem, New Jersey.

Q. How far is Salem from New York? A. Salem to New York about 135 miles.

Q. At that time were you a member of any labor union? A. Yes.

Q. What union? A. 590, I guess.

Q. And where is that located? A. Vineland.

Q. And how long did it take you to drive to New York City on an average? A. Four hours.

Q. Do you recollect what particular type commodity you
4655 hauled at that time? A. What I hauled at the time?

Q. What did you haul at the time, yes? A. Heinz's products.

Q. And where did you haul them to? A. Harrison, New York City, here.

Q. In New York City to what particular warehouse? A. Heinz's Warehouse.

Q. Where? A. Borden Avenue.

Q. Do you know where that is near? A. That is over here on Borden Avenue, Long Island.

Q. Is it near any bridge? A. Just off the 59th Street bridge.

Q. Did you generally carry solid loads? A. Solid loads, yes.

Q. And in the early part of 1937 who unloaded your
4656 truck? A. I did.

Q. How long did it take you as a rule? A. Thirty minutes.

Mr. Cahill: If your Honor please, may we have a cessation of these comments——

The Court: Just a moment. We are not going to have any comments over there, and I direct the marshal to have someone observe and find out who makes these comments. Proceed.

Q. How was your load packed? That is, was it in cans or cartons? A. Cartons.

Q. And how much did each carton weigh? A. About twenty pounds; fifteen, eighteen, twenty pounds.

Q. Now, do you recollect in the spring of 1937 seeing anybody in the vicinity of Heinz's Warehouse? A. Yes, there was two union men there, stopped me——

Mr. Maguire: I move that the latter part be stricken out.

The Court: Strike it out. The answer is "Yes".

Q. When was that? A. I don't know; it was in 1937, I think it was. 4658

Q. Do you know what month? A. It was in the summer time, I think it was.

Q. And where did you see these men? A. They came in Heinz's Warehouse.

Q. Now, before that occasion when you saw these men at Heinz's Warehouse, did you see anybody else on prior trips? A. Yes, there was a fellow who stopped me——

Mr. Maguire: I move that the latter part be stricken out.

The Court: Strike it out.

Q. Did you see anybody else, just yes or no? A. Before this that they stopped me? 4659

Q. Before then.

Mr. Maguire: I move that the answer be stricken out.

The Court: Strike it out.

The Witness: I had been stopped before then.

Mr. Maguire: I move that the answer be stricken out.

The Court: Strike it out.

Why don't you listen to the question? The stenographer will repeat the question. Do you want to tell the story your way, or do you want to answer in accordance with the questions that are put to you by the Government counsel?

The stenographer will repeat the question.

Q. (Read.) A. No.

Q. Before you got to the warehouse did you drive over any bridge? A. Yes, I came over the 59th Street Bridge.

Q. And do you recollect ever seeing any person as you drove off the 59th Street Bridge? A. No.

4661

Q. Do you recollect seeing anybody before you saw the two men at the warehouse in the vicinity of the 59th Street Bridge? A. I did at times before.

Q. Now, how long before you saw these two men? A. How long before I saw them?

Q. No, how long before the time that you saw those two men at the warehouse did you see anyone else near the bridge? A. Oh, I won't say it was the same day of the two men in the warehouse——

By the Court.

Q. You have testified that you saw two men come into the warehouse over on Borden Avenue? A. That is it.

4662

Q. Now, was there any occasion before that when your attention was directed to anyone else in particular? A. I——

Q. Just answer yes or no. A. No.

By Mr. Marks.

Q. Well, you just said, Mr. Robbins, that before you saw the two men at the warehouse you did see somebody in the

vicinity of the bridge, is that right? A. Well, yes, I have been stopped before——

Q. No, just answer the question.

The Court: Strike it out.

Nobody asked you about being stopped. You were asked if you saw somebody. Now just answer the question. Counsel for the Government will get to the point that he wants to get to, whatever it is, if you will answer the questions.

Q. Now just answer yes or no. Did you see anybody before you saw those two men on prior trips? A. No.

4664

Q. Will you stand up, Mr. Robbins, and look around the court room and tell us if there is anybody here that you know, anybody that you have seen before. A. (Standing) Those two fellows over there (indicating).

The Court: Well, we can't tell what two fellows you are referring to if you don't indicate. What row is each one, or what row is either one sitting in, and in what chair in the row, counting from this end, your right end?

The Witness: The third and fourth fellow.

The Court: Which row?

The Witness: First row; and the third fellow in the second row.

4665

Q. You are counting from your right each time? A. That is it.

Mr. Marks: May the clerk call the names of Bernard Randazzo and George Needelmann and Abraham Klenofsky.

The Clerk: Bernard Randazzo, George Needelmann and Abraham Klenofsky.

(Three men stood up.)

Q. Now are those the three men that you pointed out, the men that just now arose? A. I know them, yes.

Q. All right, sit down. By what name did you know Abraham Klenofsky?

Mr. Murray: I object, if your Honor please.

By the Court.

Q. Well, did you know the man in the second row by the name of Abraham Klenofsky? A. No.

Q. What name did you know him by? A. Rids.

Q. Rids? A. Yes.

4667 *By Mr. Marks.*

Q. Rids or Reds? A. Reds.

Mr. Maguire: Now I object.

The Court: Just a moment, Mr. Marks. I don't think that is proper.

Mr. Marks: If your Honor please, I thought the witness said Reds.

The Court: I heard what he said and I repeated it, and after I had repeated it, and got an answer, then you repeated something else.

Mr. Marks: That is because I thought I misunderstood, your Honor.

The Court: Well, I do not think that your ques-

4668 tion was proper.

Mr. Marks: Well, I assure your Honor I had no improper motive in asking that question.

The Court: I am not concerned about the assurance.

By Mr. Marks.

Q. By what name did you know that man? A. Reds.

Q. How do you spell that? A. R-e-d-s.

Q. Do you remember when you saw him for the first time? A. Yes, coming off the 59th Street Bridge.

Q. Can you tell us about when that was? A. No.

Q. What year? A. Well, it was around about 1938.

Q. Do you remember the time that you saw the two men at the Heinz Warehouse? A. I don't know the year. I know it was in the summer time.

Q. Was it before or after that time that you saw Reds? A. It was before.

Q. Now, do you remember the year? A. Well, around about 1938.

Q. How many years ago from the present time would you say it was? A. I should say two years. 4670

Q. Do you remember how long you worked for Stiles? A. I worked for Raymond about a year and a half, two years.

Q. Do you know or do you remember when you went to work for him? A. No, I don't.

Q. Were you working for him throughout the year 1938? A. Not all of it I don't think.

Q. Do you know when you left his employ? A. No.

Q. Do you know what part of 1938? A. I went to work in the summer time, I know, for him.

Q. No, my question is when did you leave working for him. A. I don't know; I don't remember.

Q. Do you know what year it was? A. It is in——

By the Court. 4671

Q. How long is it since you left his employ? A. It has been about nine months since I worked.

Q. What time of the year did you leave his employ? A. In the summer time.

Q. Well, would you say that was the summer of 1939, last year? A. Around that.

Q. And you had been employed by him for a period of about a year and a half? A. A year and a half.

By Mr. Marks.

Q. Do you remember now what year you went to work for him? A. Around the first part of 1939, somewhere around there.

The Court: You left him in 1939, didn't you?
The Witness: 1938, rather.

Q. Whom did you work for before that? A. William Harris.

Q. And do you remember when you left Harris' employ? A. (No answer.)

4673 Q. Where were you when you first saw this man Reds? A. Coming off the 59th Street bridge; I came off the 59th Street bridge.

Q. Where was he? A. He was there by a lunch car, a little restaurant there.

Q. Well, did he say anything to you when you came off the bridge?

Mr. Murray: I object to it.
The Court: He can answer yes or no.

A. A union man——

Q. No, just answer yes or no.

Mr. Murray: I move to strike out the answer.
4674 The Court: Yes, strike it out.

Q. What did he say to you?

Mr. Maguire: Objected to unless he can fix the time.
The Court: Yes, fix the time.

A. What did you ask me?

Q. Can you remember now when that was? A. No.

Q. Can you remember in what year that was? A. No, I don't know.

Q. Was it about a year ago? A. It might have been about a year and a half ago.

By the Court.

Q. How long was it before you left the employ of Stiles? A. It was in the summer time.

Q. Well, how long was it after you went to work for Stiles? A. I have been driving for Raymond for about a half year before that.

Q. Did you work for Stiles in two summers or one? 4676
A. One summer.

By Mr. Marks.

Q. Do you remember what summer you did work for Stiles? A. It was in 1938.

Q. Do you remember what part of the summer you left his employ? A. Well, it was getting on in the winter time.

By the Court.

Q. Are you married? A. Yes, sir.

Q. How long have you been married? A. About two years.

Q. Were you married while you were working for Stiles? 4677
A. Yes, sir.

Q. How long had you been working for Stiles when you got married? A. Not long.

Q. How long had you worked for Stiles after you got married? A. About three months.

Q. Now do you know the date when you married? A. It was in June.

Q. What year? A. 1938.

Q. Well now, how long had you been working for Stiles before June, 1938 A. About three months.

Q. Now, these two men that you saw, was that before you got married or after you were married? A. Before.

Q. And when was it that you saw the defendant whom you call Reds with respect to the time when you got married, if that helps you refresh your recollection? A. I worked for Raymond about——

Q. Well, were you still working for Raymond at the time that you saw Reds? A. Yes, sir.

Q. Now, you got married in June, 1938, did you not? A. Right.

4679 Q. Now, did you see Reds after that or before that? A. I saw him before I got married.

Q. So that you saw both the two men who came into the warehouse over on Borden Avenue in Long Island City? A. Yes.

Q. Then the occasion when you saw Reds was before you got married? A. Yes, sir.

Q. So that that was before what date in June? A. The 28th.

Q. The 28th of June? A. Yes.

The Court: All right.

By Mr. Marks.

4680 Q. Now, will you tell us the conversation that you had with Reds when the——

Mr. Maguire: Objected to.

The Court: I will sustain the objection.

Q. Do you remember how long before you got married you saw Reds? A. About three months.

Q. Can you tell us the exact month? A. Around March.

Q. Around March? A. Yes.

By the Court.

Q. 1938? A. Yes.

Q. How long before this occasion that you saw Reds did you see these two men come into the warehouse? A. You mean these two men over there (indicating)?

Q. No, no. You told us about two men that came into the warehouse one day when you were making a delivery in Long Island City. A. About three days later.

Q. Well, which was three days later? A. After Reds had stopped me I was making another trip over there.

Q. Did you see Reds before these two men came into the warehouse? A. Yes.

Q. And these men came into the warehouse how many 4682
days after or how long after you saw Reds? A. About three days later.

By Mr. Marks.

Q. Now, what conversation did you have with Reds when you were on your truck near the bridge?

Mr. Maguire: Still objected to, if the Court please.

The Court: Overruled.

Mr. Maguire: Exception.

Q. Well, did you——

The Court: One moment. I take the conversation as against the defendant Klenofsky or Reds and 4683
against any other defendants as to whom it is shown to the satisfaction of the jury by the required measure of proof that there was a conspiracy, and as to the defendants whom the jury find were in the conspiracy, provided whatever Reds may have said at that time was in furtherance of the conspiracy and that he was in the conspiracy.

Q. Will you give us the conversation now? A. He asked me if I had a union man to unload me. I told him no.

Q. What did he say? A. Then he said, "When you see your boss you will have to tell him that he has got to have a man to unload in the City." So I said, "I will see Stiles when I get back to Salem and I will tell him."

Q. Was anything else said in that conversation? A. No, that is all he asked me there. He said, "All right," and so I went to unload.

Q. Did you ever see him again? A. Yes, I saw him two or three days later.

Q. What did he say that day? A. He stopped me and
4685 asked me if I had a union man. I told him no. He said, "Did you tell Stiles what I told you?" I said, "Yes."

He said, "What did he say?" So I didn't tell him that he give me a phone number to call if I got in trouble or got stopped——

Mr. Maguire: I move that that be stricken out.
The Court: Strike it out.

Q. Just tell us what you said to him, not what you did not say, Mr. Robbins. A. What I did say to him?

Q. Tell us what you did say to him and what he said to you? A. Well, he just asked me if I had a union man, and I told him no. So he said, "Did you tell Stiles that he had to have a contract to have a union man to unload
4686 the truck?" So he let me go to unload, and I unloaded.

Q. Now, was there anything else in that conversation? A. No.

Q. Now, how long after that did you see two men at the Heinz warehouse? A. About three days later.

Q. Do you know who those two men are? A. I can't think of the fellows' names. I think the boy who stopped me got killed——

Mr. Maguire: I move that that be stricken out.

The Court: If you want it out, I will strike it out.

Mr. Maguire: Withdrawn.

The Court: That is one witness that cannot be called.

Q. Did you have a conversation with those men at the Heinz warehouse? A. They just asked me if I had a union man to unload. They told me that my truck was tied up and I could not unload until I had a union man. So I had a few words with them——

4688

Mr. Maguire: May I ask that that be stricken out. There is no identification here.

The Court: No, I will allow it.

Q. What did you say to them? A. I just had a few words with them, told them I had to make a phone call.

Q. And did you then make a phone call? A. Right.

Q. Whom did you call? A. Federal men.

Q. And did anybody arrive later? A. Two men.

Q. Do you know who they are? A. No, I could not place them if I ever saw them.

Q. Did those two men then talk to the two men who were at the warehouse with you? A. Right.

Q. Did you hear the conversation? A. No; I wasn't listening to that.

4689

Q. Did you hear anything that was said? A. I heard him ask if the union boy had——

Mr. Maguire: I object to it, if the Court please.

The Court: Sustained.

A. (Continued) Ask the union boy——

Mr. Marks: No, no.

The Court: Strike it out.

Q. Were the two men present during the conversation? A. Yes, they were there.

Q. And who else was there? A. The two federal men and these two union fellows.

Q. And you? A. Yes.

Q. And whom were the two federal men talking to? A. The union boys.

Q. You heard what they said? A. No, I didn't hear what they said.

4691

The Court: He has already said that. That is the reason I struck out the previous answer.

Q. Did you hear any part of it? A. I heard him ask the union boy if he had——

Mr. Maguire: I object to that, if your Honor please.

The Court: Sustained.

Q. Just yes or no. Did you hear any part of it? A. No.

Q. Did you ever see any union men at the warehouse after that? A. No.

Mr. Maguire: I object to the form of the question.

4692

The Court: Sustained. Strike out the answer.

Q. Did you ever see any men at the warehouse while you were unloading after that? A. No.

Q. Did you ever see Red Klein after that or— A. No——

Q. I beg your pardon. Reds. A. Reds? He stopped me——

The Court: No. Did you ever see him after that?

The Witness: No.

The Court: Cross-examine.

Mr. Murray: No questions.

The Court: Witness excused. Call the next witness.

(Witness excused.)

CARLTON C. HOOKS, recalled, and further testified as follows:

Further cross-examination by Mr. Murray. 4694

Q. Mr. Hooks, will you look around the court room and see if you see anyone that you recognize as having represented himself as being a member of the F.B.I.? If you confine yourself to those two tables here (indicating) we will save time. A. I wouldn't say that I see the man.

The Court: Mr. Kennedy, will you please rise?

(A man stood up.)

The Court: Do you recall ever having seen this gentleman before?

The Witness: I have seen him before, but I don't know whether he was the one I talked to in Philadelphia or not. I don't think he is.

4695

The Court: Well, did you talk to him here in New York?

The Witness: Yes, sir.

Q. When did you talk with him? A. I talked with him last Friday or Saturday.

Q. Were there any pictures of these defendants nearby when you talked to him? A. Not when I talked with him, I don't think.

4696 *Carlton C. Hooks—For Government—Recalled—Cross.*
William H. Harris, 3d—For Government—Direct.

The Court: Well, he wasn't the person who showed you the pictures?

The Witness: No, sir, I think not.

Q. Did you see Mr. Kennedy in High Point? A. No, sir.

(Short recess.)

(The roll of the defendants was called and all present.)

4697 WILLIAM H. HARRIS, 3D, residing in Salem New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Harris, what is your business? A. I am a truckman.

Q. You operate your own company? A. Yes, sir.

Q. What is the name of it? A. Salem Express.

Q. Where is it located? A. Salem, New Jersey.

Q. How long have you been in business? A. Since 1921.

Q. In the early part of 1937 about how many trucks did you operate? A. About 25 pieces of equipment. 25 tractors and trailers.

4698 Q. That is counting each tractor and each trailer as a unit, or 25 tractors and 25 trailers? A. Yes, 25 complete units; tractors and trailers as a unit.

Q. Between what points did you haul? A. Between Southern New Jersey, Philadelphia, New York and Baltimore.

Q. Were your drivers in the early part of 1937 members of any labor union? A. Yes, sir.

Q. What union? A. Local 590 American Federation of Labor, with headquarters in Vineland, New Jersey.

Q. What type of commodity did you haul? A. Mostly glass bottles.

Q. Were most of your loads solid loads so-called or miscellaneous loads? A. About 90 per cent. of them were solid truckloads.

Q. To what warehouses did you haul these loads into New York City? A. Well, we hauled them most all over the City.

Q. Any one more than others? A. No; I think most of it was spread around according to season.

4700

The Court: Did you deliver to terminals or to customers of your customers?

The Witness: To customers. To customers of our customers.

Q. Did you usually pick up any merchandise for the return trips? A. Not at that time.

Q. You returned empty? A. That is right.

Q. In the early part of 1937 who unloaded your trucks in New York City? A. Our own drivers.

Q. Did they have helpers with them? A. Some did; some didn't; it all depended on the nature of the loads.

Q. Did there come a time when your own drivers no longer unloaded their own trucks? A. Yes.

Q. Do you remember when that was? A. In April, 4701
1937.

Q. Now, do you remember around that time receiving any telephone calls from New York City? A. Yes. We received telephone calls——

Mr. Maguire: I object to anything further.

The Court: Overruled.

Mr. Maguire: Exception.

The Court: The answer is "yes." Strike out after the word "yes."

Q. After receiving such calls did you make any payments of money?

Mr. Boudin: Objected to, if your Honor please.
The Court: Sustained.

Q. Did you make a trip to New York City in the spring of 1937? A. Yes.

The Court: Was that before or after these telephone calls?
4703
The Witness: After.

Q. Can you tell us the time of your first such trip? A. It was in the early—I don't remember the exact day; it was in the early part of April.

Q. 1937? A. 1937.

Q. Whom did you see in New York City? A. A man by the name of Dillon.

Q. Will you stand up and tell us if you see him in this court room. A. (Standing) I don't recognize him.

Q. Well, take your time and look around.

The Court: You may step down if you want to.
The Witness: The man up on the end looks like
4704 him (indicating). I wouldn't say for sure. He has got his hand to his mouth.
The Court: Which row?
The Witness: First row.
The Court: First seat?
The Witness: First seat; but I am not sure.

Q. Do you want to step down and go over there and look around? A. No; I can see him from here. The man

with the curly hair looks—as near as I can remember, looks like the man.

Q. That is a different man you are pointing to. A. Yes. This gentleman here had his hand up to his face.

The Court: Which row are you referring to?

The Witness: First row, third man. I am not sure. It has been four years ago.

The Court: All right. Let the first man stand.

(A man stood.)

The Court: Do you think that is the man?

The Witness: I am not sure, sir.

The Court: Well, let the third man stand.

(Man stood.) 4706

The Witness: That is not him. That is my recollection.

The Court: Will it be conceded by the United States Attorney for the purpose of the record that the first man who stood was the defendant Edward Weinheimer?

Mr. Marks: I believe it is John, your Honor.

The Court: John Weinheimer, and the second one who stood is the man who has been referred to as "Red"?

Mr. Marks: Yes, sir; and neither is Dillon.

The Witness: I don't recognize him, but they are about the same build as the man that I remember. I haven't seen him any other place. 4707

Q. Will you describe this man Dillon? A. At the time I remember him he was a man probably 5 foot 10 or 11, weighing about 200, 205 or 210 pounds; a good big heavy-set man.

The Court: How old was he?

The Witness: I would say he was—he looked to me like he was probably twenty-six or twenty-eight years old.

Q. Can you remember anything else about his physical description? The color hair? A. He had dark brown or black hair—black hair, if I remember right.

Q. How often did you see him? A. I saw him about four times.

Q. All in approximately the same period? A. Yes. All within a period of two or three weeks.

Q. Now, where did you see him for the first time? A. I saw him up on—at a lunch car up around 25th Street, somewhere around Tenth or Eleventh Avenue.

Q. Did you have a conversation with him there? A. Yes.

4709 Q. Who else was present? A. There was nobody present but Dillon at the time that I talked to him at that time.

Q. Will you tell us what he said and what you said?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. I show you Government's Exhibit 2 for Identification and ask you if that calls to mind anyone you know? A. That looks like the man Dillon.

Q. Now will you stand up again in the court room and tell us if you see him here? A. I still don't see him.

Q. Will you step down and walk over there and look around? A. (Witness walks around the room.) I still
4710 don't see him. I don't recognize him.

Q. All right. Are there any persons who are sitting there whom you do know? A. Yes.

Q. Will you tell us do you know their names? A. Yes.

Q. Who are they? A. The first man on the second row. I believe his name is Katz.

Mr. Marks: May the clerk call the name of Max Katz?

The Court: Yes.
The Clerk: Max Katz.
(A man stands.)

Q. Is that the man who is standing? A. That is right. The fifth man on the first row, Randazzo.

Mr. Marks: May the clerk call the name of Bernard Randazzo?
The Clerk: Bernard Randazzo.
(A man stood.)

Q. Is that the man? A. That is the man. George Needelmann is the seventh man (indicating). 4712

Mr. Marks: May we have the clerk call the name of George Needelmann?
The Court: Yes.
The Clerk: George Needelmann.
(A man stood.)

Q. Is that the man? A. That is the man. And the fifth man on the second row. His name is Downs.

Mr. Marks: May we have the name of Frank Downs called?
The Court: Yes.
The Clerk: Frank Downs. 4713
(A man stood.)

Q. Is that the man? A. That is the man. The second man in the third row, Venditti.

Mr. Marks: May we have Tony Venditti called?
The Court: Yes.
The Clerk: Tony Venditti.
(A man stood.)

Q. Is that the man that arose before? A. Yes, that is right. That is all I recognize sitting there.

Q. Did you ever see this man Dillon in the company of any of those men? A. No.

Mr. Marks: If your Honor please, may I request a particular defendant to arise?

The Court: No, sir.

Q. Where did you see this man whom you call Dillon the second time that you saw him? A. Every time that I saw him he was around a lunch car at 25th and Tenth or Eleventh Avenue.

4715

By the Court.

Q. That is the only place you ever saw him? A. That is right.

Q. On those four occasions? A. Three or four occasions as I remember.

Q. Were they all in the same month? A. Yes, sir.

Q. Did you talk with him on each occasion? A. Yes, sir.

Q. For any length of time? A. I believe the first time at——

Q. No. How long a time did you talk to him? A. From a half hour to three-quarters of an hour.

4716

The Court: All right.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 53 for Identification.)

By Mr. Marks.

Q. I show you Government's Exhibit 53 for Identification and I ask you if you have seen that paper before? A. Yes, sir.

Q. Do you remember who gave it to you? A. Dillon.

Q. When? A. In around the early part of May.

Q. Did you sign it? A. No, sir.

Q. Did you take it away with you? A. I turned this over to one of our New York men who was handling our business at that time.

Q. Do you recognize the signature on this? A. Yes, sir.

4718

Q. Whose is it? A. James K. Key.

Q. Who is he? A. He was in charge of our New York office at that time.

Mr. Marks: I offer this in evidence (handing to defense counsel).

(Marked Government's Exhibit 53 in evidence.)

The Court: What is the date?

Mr. Marks: May 4, 1937. This paper, ladies and gentlemen, is dated May 4, 1937, Salem Express and Local 807, signed for the firm of Salem Express, Salem, New Jersey, James K. Key, and for Local 807 Thomas Hickey, and on the reverse side, three names, Robert Dillon, Carl Meyers, Bernard Randazzo.

4719

Q. Mr. Harris, I saw you looking around here while the attorney was examining that paper. Have you seen Dillon? A. I think I have.

Q. Where is he? A. The eighth man on the back row.

Mr. Marks: May the clerk call the name of Robert Dillon?

The Court: Yes.

The Clerk: Robert Dillon.

(A man stood.)

Q. Is that the man? A. That is the man.

Q. Now, at the time you first met Dillon, did you have a conversation with him? A. Yes.

Q. Will you tell us what was said by him?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

4721

Q. What did he say? A. I met him up on the corner of 25th Street up there, and he told me—he informed me that he had a couple of my trucks tied up there, and he informed me I would not be able to move them in New York without putting——

Mr. Boudin: If your Honor please, I move to strike out the words "that he had a couple of my trucks tied up."

The Court: Denied.

Mr. Boudin: That is not part of the conversation, as I understand it.

The Court: Well, I understood the contrary.

4722

Mr. Boudin: Well, I may be mistaken. I understood it was an interpolation.

The Court: Well, I will inquire.

By the Court.

Q. Is that what he told you? A. No, that is the reason why I was there, because he had these trucks tied up.

The Court: Strike it out.

Q. What did he say? A. He said I would not be able to move those trucks until I hired or allowed the union in New York to place a union man on them to drive them around the City and unload them.

By Mr. Marks.

Q. What did you say to him? A. I told him I wouldn't do it.

Q. What did he say? A. He said, "All right, if you don't do it, your trucks won't move here, and they will stay here until they rot until you agree to do it."

Q. What did you say then? A. I still insisted I would not do it. 4724

Q. And what did he say? A. He said, "All right, you can suit yourself about it; you can put them on or leave the trucks stick here and they won't move."

Q. Did you make any reply? A. I replied back to him that I did not believe that he could do it; it looked to me like a racket; that we were being forced to do something we did not want to do; that we had no use for them, and it looked to me like a big steal, and they were trying to get by with something that we did not want to get shoved down our necks.

Mr. Boudin: If your Honor please, I move to strike out all of the statement that the witness replied to the last question on the ground that it was not for the purpose of eliciting any answer, apparently, or an admission, but merely for the purpose of having him make a statement 4725

By the Court.

Q. Did he make any reply to that? A. Sir?

Q. Did he make any reply to that? A. Yes.

Q. What did he say? A. He said I would not move those trucks until I put 807 men on there.

The Court: Motion denied.
Mr. Boudin: Exception.

By Mr. Marks.

Q. What did you say then?

Mr. Boudin: Same objection, your Honor.
The Court: Overruled.
Mr. Boudin: Exception.

4727

A. Well, I insisted that I would not put them on, but after a lot of argument along that line, why, I had to agree to get my——

Mr. Boudin: I move to strike it out, if your Honor please.
The Court: Strike it out.

Q. Just what did you say? A. I said, "Well, to get my trucks out of New York I will have to pay up, but that is the last that I will be in New York."

Q. And did you make any payment then? A. I didn't make a payment there. They allowed me to proceed and I made the payment by check afterwards.

4728

Q. Did you make another trip to New York City shortly after that? A. Yes.

Q. How long after? A. About two days after that.

Q. Whom did you see on that visit? A. I saw Dillon again.

Q. Where? A. At the same place.

Q. Did you have any trucks in New York that day? A. Yes.

Q. How many? A. I had four.

Q. Now, did you have a conversation with Dillon? A. I had about the same conversation as the time prior to that.

Q. Will you tell us what was said?

Mr. Boudin: Objected to, if your Honor please.
The Court: Overruled.
Mr. Boudin: Exception.

A. I told him that I was going into New York and was going to unload my trucks and I saw no way that he could stop me, and I didn't care what he said or anybody else, I wasn't going to spend $9.42 for every one of these trucks that came into New York; that I would discontinue 4730
business rather than pay it because the revenue was not there to pay the bill.

Q. What did he say? A. He said, "I don't give a damn what your revenue is or anything else. You are going to pay it or else." So I told him then that I would pay him then to get my trucks out of New York and I would stop coming into New York.

Q. What did he say to that? A. He said, "It is okay with us; if you don't do it, somebody else will." So I agreed to pay him and took them out of New York.

Q. Have you told us the whole conversation? A. No.

Q. What else was said there? A. I tried to tell him and explain to him that these trucks were coming into New York and that we had no need of these men—— 4731

Q. Of which men? A. Of the 807 men; that we had our own union drivers on the trucks which belonged to the American Federation of Labor; that the local union in South Jersey had informed us that we had no need for these men in New York, and it was against their wishes that these men would be put on. I told him if they insisted on it and if we had to pay, we would discontinue our New York operation and we would discontinue it at once, which we did.

Q. Is that the whole conversation now, Mr. Harris? A. That is about—of course it took about a half hour to go through this.

Mr. Boudin: If your Honor please, I take it "which we did" is not part of the conversation, and I move to strike it out.

The Court: Denied.

Mr. Boudin: Exception.

Q. Now, do you remember the approximate date of this second conversation? A. That was about the 8th or 10th of April of 1937.

4733

Q. Did you send any trucks into New York the following day? A. No, we stopped our operation at once.

Q. For how long?

Mr. Boudin: If your Honor please, I move to strike out the answer, all the answer after "No" on the ground that it is not responsive.

The Court: Strike it out.

Q. How long was it?

By the Court.

Q. When did you next send any trucks into New York, if ever? A. Two weeks after that.

4734

Q. Then for a period of two weeks there was no movement of your trucks to New York? A. That is right.

By Mr. Marks.

Q. Do you remember when you were in New York City again? A. Either the 1st or 2nd of May following this conversation.

Q. Will you look at Government's Exhibit 53 in evidence and see if that refreshes your recollection as to the date? A. Yes. This is on the 4th of May, 1937.

Q. Is that the date you were in next? A. Yes.

Q. Whom did you see on that trip? A. Mr. Dillon.

Q. And where? A. At the same place at 25th Street.

Q. Was anyone with him? A. There was someone with him but I don't remember who it was.

Q. Did you have a conversation with him? A. Yes.

Q. What did he say?

Mr. Boudin: Same objection, your Honor.

The Court: Overruled. 4736

Mr. Boudin: Exception.

A. He told me that before I could put trucks in New York I would have to have a union contract, and if I wished he could arrange it and bring the contract up there so I could sign it and go to work.

Q. What did you say to him? A. I said, "Well, I think you got me licked, and you got me run down the river, and I will have to go along because my shippers demand that I either make deliveries into New York or sacrifice other business I have in Philadelphia or Baltimore."

Q. What did he say then? A. He said, "All right, I will go down to union headquarters and get the contract and bring it up and have you sign it," which he did, but I did not sign it. 4737

Q. Was there anything else said in that conversation? A. That was all.

Q. Did he then leave? A. Yes, he left.

Q. When did you next see him? A. I never saw him again after that until today.

Q. After that conversation did you send your trucks into New York? A. Yes.

Q. Regularly? A. Yes.

Q. About how many trucks did you average in one day after that? A. About four trucks a day.

Q. And approximately how long did it take to unload one truck? A. Without the union helpers we can unload a truck from an hour to three hours.

Q. Did you send any checks to New York after that? A. Yes, sir.

Q. How did you send them? A. I sent them up by our drivers.

Q. And did you send them weekly or monthly? A. Sometimes I sent them by the week; sometimes I had to send them before the week was out because they demanded it—

4739 The Court: No, strike out the "because".

Q. As a rule did you send them weekly? A. As a rule weekly.

Q. Do you know who worked on your truck in New York City, which 807 men? A. Yes.

Q. What are their names?

Mr. Maguire: May I have the time fixed, if the Court please?

The Court: Yes.

Q. After——

4740 *By the Court.*

Q. Was this after the contract was signed? A. Yes.

Q. What men worked on your truck, do you know, in New York after that day? A. Yes, sir.

Q. Give us the names.

Mr. Maguire: May we also say prior to June the 1st, 193[illegible]

The Court: Up to Decoration Day of that year, May the 30th.

A. Well, I had William Farrell, Thomas Gawes, Needelmann——

Mr. Maguire: May we have the last name repeated?

The Witness: Needelmann. Katz, Randazzo, Dillon——

Q. This was in the first month? A. This was when we first started.

Q. All right. Any others? A. Venditti. That is all I 4742
can recall now. I have had more than that, but that is all I can refresh my mind.

By Mr. Marks.

Q. When did you see Frank Downs for the first time? A. Along in the latter part of 1937.

Q. Did he ever work on your trucks in New York? A. Yes, sir.

Q. Now, who was the so-called No. 1 man after this conversation with Dillon? A. A man by the name of Farrell.

Q. Did you ever have any conversation with Farrell with respect to the unloading of your trucks? A. Yes, sir.

Q. And do you remember when? A. About twice a week 4743
ever since this thing started; sometimes oftener.

Q. Do you remember any specific conversation with respect to working conditions in New York? A. Yes.

Q. When was that? A. Almost every day.

Q. When was the first such conversation? A. The first day he was on our truck.

Q. And when was that? A. During May of 1937.

Q. Now, who else was present? A. This man Key.

Q. Anyone else? A. There was others present. I don't remember who they were. Sometimes there would be ten or twelve or fifteen of them around there.

Q. What was the conversation?

Mr. Boudin: Objected to, if your Honor please.

By the Court.

Q. You were there? A. Yes, sir.

The Court: Overruled.

Mr. Boudin: Exception.

4745

By Mr. Marks.

Q. What was the conversation? A. The conversation mostly was about the unloading condition and the type of service and the——

The Court: No, you are giving us your conclusion. Strike it out.

Mr. Boudin: I move to strike it out.

The Court: I have just directed that it be stricken out.

You were asked to give us the conversation, what was said by Farrell and what was said by you. The

4746

jury will draw the conclusions if you will tell them what the facts are.

The Witness: When he first started to work I asked them how much work they intended to do, and they told me they would put in eight hours and do eight hours of work.

Mr. Boudin: Your Honor, I would like to know whether this means Farrell. He says "they".

The Court: Yes. Is this the conversation with Mr. Farrell?

The Witness: Yes, sir.

By Mr. Marks.

Q. All right, go ahead. A. He informed me that they were taking over my trucks and they would work to suit themselves, when they wanted to and as much of it as they wanted. I objected to it, and they still informed me that when they wanted to go to work, they would go to work, and they would do it the way they wanted to do it; that I had no part to do with it; and I objected to it, and I went to the union about it and I had the same answer.

Mr. Boudin: I move to strike it out.

The Court: Just a moment. You are talking now about the first conversation? 4748

Mr. Boudin: May we have that stricken out, if your Honor please?

The Court: I am going to find out whether he means that that all happened in the first conversation or whether there were a number of conversations.

The Witness: This all happened in the first conversation. I wanted to know, and I went to these men to find out how much work they were going to do so I could determine how much it was going to cost me and whether I had to come to New York and stand on the corner every day in the week or whether I could go ahead and say, "Well, I am going to get two trucks unloaded," or "I am only going to get one." 4749

By the Court.

Q. Is that what you said to Farrell? A. That is right. I went there and asked him——

Q. What did he say to you? A. He said, "We will do it to suit ourselves. If we can only do one, we will only

unload one; if we can unload two, we will unload two; that is up to us; whatever we say about it, you will have nothing to say."

Q. You said you had several conversations with Farrell, is that right? A. That is right.

Q. How many conversations did you have with Farrell before you went to the union officials or union office, if I understood you correctly to so state? A. I had four or five conversations with him before I went down there.

Q. Now, when you went to the union office, can you state whom you saw there? A. When I went to the union office I saw a man by the name of Larkin.

4751 Mr. Maguire: May I move to strike out the answer he made some time back with reference to going to the union office and a statement which was supposed to have been made there?

The Court: Yes, I will strike that out. I will strike out all except what he has now stated was in the first conversation that he had with Farrell and the fact that he had subsequent conversations with Farrell, and that after three or four of such conversations he went to the union office and he saw a man by the name of Larkin. Is that your testimony?

The Witness: Yes, sir.

The Court: All right.

4752 *By Mr. Marks.*

Q. Did you select any of the men that worked on your trucks? A. No, sir.

Q. Did you have any conversation with Farrell about the number of trucks that would be unloaded in New York by each man? A. Yes, sir.

Q. Do you remember when the first such conversation took place?

Mr. Boudin: If your Honor please, I thought he testified to the first conversation and gave it to us.

The Court: He did. Are you inquiring now about the first conversation?

Mr. Marks: Well, I had thought, your Honor, that this subject was a little different than the subject of the first conversation.

The Court: Well, what I am trying to find out is if you are directing your question to the first conversation.

Mr. Marks: No, sir; to a different conversation from the one he has already testified.

The Court: Well, will you please fix a time when this conversation took place, because somebody has to have the opportunity—— 4754

Mr. Marks: Well, I think I just asked that.

The Court: Well, you go ahead and handle your case, and I will handle the matter from the bench. I am trying to get you straightened out here so that I can follow what you are doing, because it will be my duty to direct the jury so that they can arrive at an intelligent conclusion in this case.

Mr. Marks: Yes, sir.

The Court: Now please don't try to confuse me.

Mr. Marks: I assure your Honor I had no such intention.

The Court: All right, put your question.

Mr. Marks: Yes, sir, I shall. 4755

By Mr. Marks.

Q. Do you remember a conversation with Farrell about the number of trucks that were to be worked per day by the 807 men? A. Yes.

Q. Now, is that the same conversation as to which you have already testified? A. No.

Q. When was the first conversation on the subject which I have just indicated? A. About a month after the signing of this contract.

Q. And what month would that be in? A. June.

Q. Of 1937? A. That is right.

Q. Where did that conversation take place? A. On the corner of Laight and Varick Street.

Q. Do you know who was present? A. This man Key, Farrell, and about ten or a dozen other union men which I did not know.

Q. Now, what did you say to Farrell? A. I asked him if he would tell me how much work he expected to do for
4757 the amount of money we were paying him.

Q. What did he say? A. He said, "What do you expect to get?"

Q. And what did you say? A. I said, "Well, I expect to get at least $9.42 worth of work."

Q. And what was his answer? A. He said, "We will be the judge as to how much work you will get for $9.42."

Q. And what did you say? A. I said, "Well, you may be the judge about that and about how much you will get, but still you may not satisfy me with the amount of work that you are doing."

Q. What did he say to that? A. He said, "I don't give a damn whether we satisfy you or not. You are going to pay and pay through the nose and like it."

4758 Q. What did you say? A. I didn't say nothing. I shut up.

Q. How many trucks a day did each 807 man work on at that time? A. Some days one, some days two.

Q. Did you say anything about that to Farrell? A. Yes, we objected to it all the time.

Q. What did you say about that? A. I complained about it that he was not giving us a day's work.

Q. What did he say about the number of trucks that each man would work on? A. On most all occasions that

I talked to him he told me that he would unload at least two trucks a day and that was all.

The Court: Two trucks?
The Witness: Two trailers a day, sir.

Q. How long on an average did it take you to unload two trucks? A. Oh, with our drivers, without the 807 men coming in, all of our trucks would be out of New York before 11 o'clock in the morning.

Mr. Marks: That is all.
The Court: Cross-examine.

4760

Cross-examination by Mr. Murray.

Q. Mr. Harris, will you look on the right at these men inside of the rail and tell me whether or not you see Farrell there. A. No, sir.

Q. When did you last see Farrell? A. About ten days ago.

Q. Is he still working for you? A. Yes, sir.

Q. Was he working up to May 31st of 1938? A. Yes, sir.

Q. And about two years ago? A. Yes, sir.

Q. Now, outside of Farrell and Dillon, did you talk to anyone about the employment of Local 807 men on the trucks? A. Yes.

Q. Whom did you talk to? A. I talked to Mr. Devery, Mr. Clarke, Mr. Larkin. 4761

Q. Do you remember when you talked to Mr. Devery? A. Yes.

Q. And when was that? A. About a year ago.

Q. Well, I mean up to, say, May 31, 1938? Did you talk to Mr. Devery before May 31, 1938? A. No, sir.

Q. Did you talk to Mr. Larkin before that date? A. Yes, sir.

Q. Now, will you fix the date, if you can, when you first talked with Mr. Larkin? A. I first talked to Mr. Larkin about along in the middle—the summer of 1937. That is, I attempted to talk to him.

Q. Well, was that after this contract had been signed? A. Yes, sir.

Q. Did you talk to anyone else that you recollect about that time? A. No, sir.

Q. Now will you try as precisely as you can to fix the date when you say you had the talk with Farrell concerning the amount of work that there was to be done by Local 807 men? A. The first time, sir?

4763 Q. Yes. A. Along right after this contract was signed, probably a week or two weeks; something like that.

Q. Would that be May, 1937? A. Yes.

Q. Where was that talk held? A. On the corner of Second—on the corner of Laight and Varick Street.

Q. On the street? A. Yes, sir.

Q. Were any of your trucks there at that time? A. Yes, sir.

Q. Now, when you talked to Dillon on the first occasion, what time do you fix as that conversation? What is the date? A. I would say along about the early part of April, 1937.

Q. And that was at 25th Street and Eleventh Avenue, was it? A. As nearly as I can recall the street, I am not sure, I am not so sure about the street; I remember the

4764 lunch car and I remember it was up about the Seaboard Truck Terminal, just a little bit from the terminal there, and as I understand it, it is about Eleventh or Twelfth Avenue and 25th Street.

Q. In any event, it was in that neighborhood; that is correct, isn't it? A. Yes.

Q. Well, did you see Farrell with Dillon when you had that talk? A. I don't recall seeing Farrell with Dillon.

Q. Did you see anybody else that you can now identify as being with Dillon at that time? A. No, sir.

Q. In other words, Needelmann was not there, was he? A. I would not say that he wasn't there and I would not say that he was. I don't recall that any of these men that I know today was there at that time. No, I am satisfied there was some other men around there, but as far as identifying them today, I could not do that.

Q. Well, do you say that there were other men in the company of Dillon when he had that conversation? A. You are asking me a conversation? Which conversation? I had three or four of them.

Q. The first conversation you had around April in the vicinity of 25th Street and Eleventh Avenue. A. I don't recall any other men being there. 4766

Q. Well, at least Katz wasn't there, was he? A. I don't remember seeing him there.

Q. Randazzo wasn't there, was he? A. I don't remember seeing him there. There was men there, but I don't remember now just who those men were.

Q. You do know Farrell, don't you? A. Yes.

Q. And you have identified Needelmann, Katz, Randazzo and Venditti, haven't you? A. Yes, sir.

Q. Now, were any of those men present when you say you had this conversation with Dillon? A. Not that I remember.

Q. Now, you said in substance, did you not, that Dillon told you that unless Local 807 men were employed that your trucks couldn't move? A. Yes, sir.

Q. And you also said that they would stay there until 4767
they rotted, or something to that effect? A. That is right, sir.

Q. Now, did you have any trucks at 25th Street and Eleventh Avenue while you were holding this conversation with Dillon? A. Yes, sir.

Q. What trucks did you have? A. I had my own trucks.

Q. Well, how many? A. Two.

Q. And do you know who the drivers of those trucks were? A. I don't remember who they were.

Q. Do you know whether or not they were present when you were holding this conversation with Dillon on that occasion? A. There was nobody present when I talked to Dillon about these—the hiring of these men, only Dillon and myself.

Q. You see, Mr. Harris, I am directing my questions to this first meeting. You understand that, don't you? A. Yes, sir.

Q. You have said there were other men about there, but you couldn't identify them? A. That is right.

4769 Q. So, when you held the conversation did I understand you to say that the conversation was exclusively between you and Dillon? A. That is right.

Q. Well, did you see any of your drivers in that immediate neighborhood while you were holding this conversation with Dillon? A. Yes, sir.

Q. Well, whom did you see? A. Two of my own drivers.

Q. Do you recollect now who they were? A. No, sir.

Q. Well, how far were your trucks away from this diner where the conversation was held? A. These trucks were parked four or five lengths—truck lengths I am talking about—back down the street from this diner. There was four or five other trucks up ahead of them in the same predicament that I was. As they piled them up my trucks were in the line.

4770 Q. Was that the point where your trucks were making deliveries? A. No.

Q. Do you know what the destination of those two trucks were when they left your place in Salem? A. I did at that time. I don't know now.

Q. Well, did you have any places in the neighborhood of 25th Street and Eleventh Avenue to which you made deliveries? A. No, sir.

Q. Well, do you know of your own knowledge who drove the two trucks to that neighborhood of 25th Street and Eleventh Avenue? A. I know that my own drivers did.

Q. Do you know where they drove them from? A. Yes.

Q. Where? A. From the Holland Tunnel.

Q. Well, when they got into the Holland Tunnel, they had a destination beyond the Holland Tunnel for the deliveries, didn't they? A. Yes, sir.

Q. You say now you don't know where they were to be delivered? I mean the merchandise. A. I can't tell you today where that merchandise was going. I can tell you where it was going if you want me to furnish you where those trucks were going, the truck numbers, the drivers and all. I can furnish that if you want, but from my memory I couldn't give you that information. 4772

Q. Well, all right. Have you got that data? A. Not with me.

Q. Where is it? A. In Salem.

Q. Have you consulted the data before you came here? A. No, sir.

Q. Those two trucks that you spoke about when you were having the conversation with Dillon, do you know whether or not they had merchandise on them or whether they were empty? A. They were loaded, sir.

Q. Well, do you know what they were loaded with? A. They were loaded with glass bottles.

Q. You say you don't know where the glass bottles were to be delivered? A. They were to be delivered somewhere in New York. 4773

Q. Yes, but I mean the particular place to which they were to go? A. No, sir.

Q. How far was Dillon away from the truck when he was having this conversation with you? A. Well, Dillon and I were standing up on the corner, 25th and Eleventh Avenue or Twelfth Avenue, whichever it is. The trucks were further down the street.

Q. Were the trucks within your view? A. Yes, sir.

Q. Were your drivers on the trucks? A. I don't remember. I believe the drivers were in the lunch car getting something to eat when I got there. I am not sure.

Q. During this conversation with Dillon or after the conversation with Dillon you say your truck drivers returned to their trucks? A. Yes, sir.

Q. Did you see them get on the seats of your trucks? A. Yes, sir.

Q. Well, what did they do? A. They drove off.

Q. So am I correct in saying that Dillon did not prevent them from driving off? A. Yes.

4775 Q. Do you know whether or not the trucks drove to the place where they were to make deliveries? A. I assume they did go to the place where they were making deliveries.

Q. Do you know whether or not the delay on the part of your truck drivers in making deliveries was caused by the fact that they were getting something to eat in the diner? A. I don't quite understand. May I ask to have the question read?

The Court: Yes; the stenographer will repeat the question.

Mr. Murray: Perhaps I can simplify it.

The Court: No.

Q. (Read) A. I would say that that was not the cause
4776 of the delay.

Q. That was not? A. That was not.

Q. Well, did you see Dillon do anything which amounted to a physical restraint of the drivers in making their deliveries? A. No.

Q. You had a conversation in which Dillon said in substance that they required local men on the trucks, is that right? A. That is right.

Q. And you replied to it? A. Yes.

Q. Did you discuss at that time, or at least did Dillon suggest at that time that you sign a contract with the local in New York? A. Yes, sir.

Q. And was it at that time that you said that you would not? A. Yes, sir.

Q. And that you would not discuss it? A. I didn't say that I wouldn't discuss it.

Q. Well, in substance. A. I wouldn't take up the matter of contract, because we already had a contract which covered what we thought was necessary.

Q. No. I mean did you discuss with Dillon at that time the question of signing a contract? A. Yes, sir.

Q. Did Dillon urge on you that you should sign a contract with Local 807? A. Yes, sir. 4778

Q. And in substance you said you didn't want to? A. That is right.

Q. And that you wouldn't sign? A. That is right.

Q. Was it after that discussion that your trucks drove away? A. Yes.

Q. And went on their way to make their deliveries? A. Yes, sir.

Q. Now, at that time did Dillon ask you for any money? A. No, sir.

Q. Did he say to you at that time that he had to be paid for anything he did? A. I naturally assumed if he got on the truck he was going to be paid for it.

Q. No. I mean for anything he had done up to this conversation that he had with you? A. He hadn't done 4779 anything for me up to this time.

Q. I know, but did he ask you for any money at all? A. No, sir.

Q. At that time? A. No, sir.

Q. Did any of these other men that you say you saw in that neighborhood ask you for any money? A. No, sir.

Q. Now, did your trucks come back to New York the next day? A. Yes, sir.

Q. Do you know whether or not they made their accustomed deliveries the next day? A. Yes, sir.

Q. Do you recollect how many of your trucks came into New York the next day? A. As nearly as I remember there were four on the next day.

Q. Now, on the next day, that is the day after this conversation with Dillon, did you talk to Dillon? A. I talked—I don't know about the very next day. I talked to him about three or four times prior to the signing of this contract.

Q. I know, but what I want to learn is whether or not you talked to him the day after the first conversation? A. No, not the day after; I wouldn't say so.

4781

Q. All right. Do you know whether or not your trucks made their accustomed deliveries on the second day? A. Yes.

Q. Did you pay anyone on that occasion? A. Whoever the men were working on there we paid them.

Q. On the second day? I mean the day after the conversation with Dillon? A. Yes, sir.

Q. Well, whom did you pay? A. I don't remember who we paid. Whoever worked on the truck got paid for it.

Q. Well, do you know of your personal knowledge whether or not anyone did work on the trucks? A. I don't recall right now whether somebody worked the second day or the third day or what day it was, but I have a record that tells the particular days all these men worked, who

4782

worked, and how much they got paid for it and where they worked.

Q. Yes. I know it, but I am trying to find out whether or not your trucks made their accustomed deliveries on the day after this talk with Dillon. A. We had paid anyone that worked on the trucks. If they worked on the trucks we paid them.

Q. That is not the question. A. That is the answer to the question that you asked me.

Q. No. I want to find out if the day after the conversation with Dillon you paid anyone for working on your trucks.

Mr. Cahill: If your Honor please, I object to the form of the question as including two questions in one; that seems to be the witness' difficulty.

The Court: Sustained.

Q. Did your trucks make deliveries the day after the conversation with Dillon? A. Yes, sir.

Q. Did you pay anyone on that day outside of your own drivers for making deliveries?

Mr. Cahill: If your Honor please, I think the same vice is present. It has to be broken into two parts. 4784

The Court: Let me hear the question.

(Question read.)

The Court: Overruled.

Q. Do you understand the question, Mr. Harris? A. Yes, sir.

Q. If you don't I will make it plainer. A. I understand it. I don't remember.

Q. Well now, was it on the first day that you said to Dillon you would take your business out of New York and wouldn't make any more deliveries? A. Yes, sir.

Q. Well, do you know how long it was after the conversation with Dillon that you did pay anyone besides your own drivers for making deliveries? A. If those union men were on those trucks we paid them. I can't say—— 4785

The Court: No, strike that out. Repeat the question.

Q. (Read.) A. No, sir.

Q. Did your drivers make deliveries for, say, two weeks after the conversation with Dillon before you paid anyone besides your drivers for the deliveries? A. No, sir.

Q. Well, do you know how long it was after that conversation that you first paid anyone in addition to your drivers? A. No, sir. I have no records with me. I can't tell from memory the exact time we paid these men. We paid them by check. Those checks is a matter of our records and they will tell when we paid these men.

Q. You haven't got the checks with you? A. No, sir.

Q. Well now, did you make checks payable to the men who worked on your trucks? A. We made the checks pay-
4787 able to the men that claimed they worked.

Q. Well, with that subtle distinction——

Mr. Cahill: I object to the characterization.

The Court: Sustained. Counsel must not make those observations.

Mr. Murray: Your Honor, I move to strike out the answer as not responsive.

Mr. Cahill: I submit it is, your Honor.

Mr. Murray: May we have it?

The Court: Read it.

(Answer read.)

The Court: Read the question.

4788 (Question read.)

The Court: Now what is your motion?

Mr. Murray: The motion is to strike it out.

The Court: Strike it out. Can you answer that question?

The Witness: May I have the question read?

(Question reread.)

The Witness: As far as I knew I did.

By Mr. Murray.

Q. That is, they were made payable to names? A. Yes, sir.

The Court: If I said heretofore to the jury in words or in substance that it was my function to direct the jury, I spoke inadvisedly, because it is not my function to direct the jury, but it is my function to so direct this trial that it will aid the jury or guide the jury in reaching an intelligent disposition of it, and that means that is my job to keep the case on the tracks, and that I have been trying to do. Now we will recess until Monday morning at half-past ten. 4790

(Adjourned to May 6, 1940, at 10.30 A. M.)

New York, May 6, 1940,
10.30 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

The Court: On April 18th a witness testified here named Edward A. Strozyk of Swedesboro, New Jersey, and his cross-examination was suspended to enable him to return home and produce some papers; and he came the following Friday, as he was directed, but the fact of his being here was lost sight of; and I suggested that counsel agree upon a subsequent date for his return, and I now understand that the necessity for the production of the papers has been obviated. Am I correct? 4791

Mr. Maguire: You are, sir.

The Court: All right. Then a note of that may be made in the minutes and he may be apprised that it will be unnecessary for him to return.

WILLIAM H. HARRIS resumed the stand and further testified as follows:

Cross-examination (continued) by Mr. Murray.

Q. Mr. Harris, do you recall that on Friday you testified that at various times Max Katz, Bernard Randazzo,
4793 George Needelmann, Frank Downs and Tony Venditti had been employed on your trucks? A. Yes, sir.

Q. Is there anyone else that you now recollect outside of those men who were employed on your trucks? A. A man by the name of Farrell, Dillon.

Q. Did Dillon actually work on your trucks? A. I never saw him work on a truck. We paid him for working on a truck.

Q. How often? A. I don't remember how often he worked. I don't think he worked very many times; not over three or four times.

Q. Now, had you ever had any conversation with Max Katz whom you say worked on your truck? A. Yes, I talked to him.

4794 Q. How often did you talk to Katz? A. I don't remember. I talked to him most every time I saw him. Occasionally, once every two or three weeks.

Q. Well, do you recollect any particular date on which you talked to Katz? A. No, sir.

Q. Do you recollect where it was that you held a conversation with Katz? A. Yes, sir.

Q. Where? A. At the corner of Varick and Laight Street.

Q. Was that before, say, June 1, 1938? A. Yes, sir.

Q. Do you recollect now any of the conversations that you say you had with Katz? A. Only that we objected to having these men on the truck.

Q. Well, was Katz employed on the truck without having any conversation with you prior to the time he was employed? A. Well, I never employed Katz. Katz just came along and took one of the trucks.

Q. Well, were you present when that occurred? A. No, sir. I have been present when he got on our trucks and took them out.

Q. Well, was that after he had been on your truck for the first time? A. Yes. 4796

Q. Well, when you had the first conversation with Katz do you recollect what driver was then driving your truck? A. No, sir.

Q. When you had those conversations with Katz, was it always in the vicinity of the Holland Tunnel? A. Yes, sir.

Q. Did you ever talk to Bernard Randazzo? A. Yes, sir.

Q. Where? A. Same place.

Q. When? A. Well, along since about the same time; he was there with all the rest of them.

Q. Well, what time was that, if you please? A. Well, it was after these union men—after we had a contract with the union.

Q. Do you recollect the first time that you talked to Randazzo? A. No, sir.

Q. Do you recollect how many times you talked with him? A. I would say ten or a dozen times. 4797

Q. And was it always in the same place? A. Yes, sir, either on that corner, around that big parking lot somewhere; sometimes it would be in a restaurant on the opposite corner, but always in that vicinity.

Q. Are you able to tell us precisely what conversation you ever had with Randazzo? A. Most of the conversa-

tions I had with Randazzo was about a man by the name of Gows that we had who disappeared and we could never find him. I talked more to him about that particular man than anything else.

Q. That was the substance of the conversation with Randazzo? A. Yes, mostly.

By the Court.

Q. What was the name of the man? A. Thomas Gows.

Q. Do you know how to spell it? A. G-o-w-s, I think.

By Mr. Murray.

4799

Q. Well, how often between April and May of 1937 and June 1st of 1938 did you see George Needelmann? A. Well, I would say ten or a dozen times.

Q. Well, did you ever talk with him? A. Yes, sir.

Q. Was Needelmann employed on your trucks after the contract had been signed with the union? A. Yes, sir.

Q. And was Katz employed on your trucks after the contract had been signed? A. Yes, sir.

Q. Does that also apply to Randazzo? A. I believe Randazzo was one or two times, not over two or three times—maybe three times at the most that he was employed by us.

Q. That is during that period of May of 1937 up to June

4800 1st of 1938? A. Yes, sir.

Q. Did you ever make any checks payable to Randazzo? A. I don't remember.

Q. Did you ever make any checks payable to Katz? A. I believe I did.

Q. Do you know how often? A. No, sir.

Q. Do you know when? A. Yes; after these contracts were signed we made all of our payments by check.

Q. Well, when, if you can fix the time, did you ever pay Katz by check? A. I could not say the exact date. Some time in 1937 and early in 1938.

Q. Well, now, have you got any present recollection of how many checks you made payable to Katz? A. No, sir.

Q. Have you got a record of it any place? A. I think we have a record of it, yes, sir. I think we have a record of it in the office.

Q. That is in your office in New Jersey? A. Yes, sir.

Q. Have you consulted your records over the week-end? A. No, sir.

Q. Well, was George Needelmann employed after you signed the contract with the union? A. Yes, sir. 4802

Q. Had you ever seen him before you signed the contract with the union? A. I believe I have.

Q. Beg pardon? A. I believe I have.

Q. Are you in any way certain about it? A. Yes, sir.

Q. Where did you see him? A. The corner of Varick and Laight Street.

Q. When? A. All during this time.

Q. You recollect, do you not, that the contract was signed in May of 1937? A. That is right.

Q. And when you say "during all this time" you mean that that is inclusive of the time before you signed the contract? A. Yes, sir.

Q. Well, after your conversation with Dillon about two weeks elapsed, did it not, before the contract was signed by your representative? A. Yes, sir. 4803

Q. In those two weeks are you certain that you saw George Needelmann? A. No. I don't believe I saw him within those two weeks.

Q. Well, is it true that you didn't see Needelmann until after the contract was signed? A. No, sir.

Q. Is that true? A. No, sir.

Q. Did you talk to Needelmann before the contract was signed? A. I can't say sure whether I did or not. I talked to this whole group of men. There were a group that were there.

Q. Mr. Harris, my inquiry is particularly directed to Needelmann at this moment. Did you talk to Frank Downs before the contract was signed? A. I don't believe so.

Q. Did you ever have any conversation with Frank Downs? A. I don't believe I did. If I did I don't remember.

Q. Do you know whether or not Frank Downs was em-
4805 ployed after the contract had been signed? A. Yes, sir.

Q. Have you any present recollection as to how many times you paid Frank Downs? A. No, sir.

Q. Have you any office memorandum in your possession which would show how often you paid Frank Downs? A. No, sir.

Q. Did you talk to Tony Venditti before the contract was signed or after? A. As near as I can remember, after.

Q. Did you talk to him more than once? A. After the contract was signed?

Q. Yes. A. Yes, sir.

Q. How often? A. Most every time I saw him. Probably once——

Q. How often would that be? A. About once every two
4806 weeks.

Q. Where was it you talked to him? A. On the corner of Varick and Laight Streets.

Q. Do you know how many payments you made to Venditti? A. No, sir.

Q. Have you got a record of it? A. In Salem, yes, sir.

Q. When did you first meet Farrell? A. I believe in April of 1937.

Q. Was that before the contract was signed? A. Yes, sir.

Q. Where did you meet him? A. 24th and Eleventh Avenue at the Munson Diner.

Q. Now, did you have an office in New York in April or May of 1937? A. No, sir.

Q. Did you ever have an office in New York, at least before June 1 of 1938? A. Yes, sir.

Q. Where? A. On Greenwich Street.

Q. And do you recollect when you opened that office? A. No, sir.

Q. Was it after May of 1937? A. Yes, sir.

Q. Can you approximate how long after that time you opened this office? A. As near as I can remember we opened that in the fall of 1937. 4808

Q. Did you have a dispatcher in the office? A. Yes, sir.

Q. What was his name? A. Key.

Q. Would you mind spelling that for me? A. K-e-y.

Q. How long did he continue to be the dispatcher in your office? A. He was with us until the spring of 1939.

Q. Was there before June 1 of 1938? A. Yes, sir.

Q. Well, did you during the period after, say, May 15 of 1937 and up to June 1 of 1938 have a conversation with Farrell in which you told him that he could hire the men who would work on your trucks? A. Well, Farrell was the steward of our shop and he had to do with the hiring of the men. We had nothing to do with it.

Q. Well, did you tell him whatever men he selected to work on your trucks was satisfactory to you? A. No, sir. 4809

Q. Did you have any such conversation with him which substantially meant that? A. No, sir.

Q. Well, is it correct to say that you were in communication with Farrell between May of 1937 and June of 1938? A. Yes, sir.

Q. Every day? A. No, sir.

Q. Was it Farrell who always employed the men that worked on your trucks? A. Yes, sir.

Q. And did he employ them without submitting their names to you? A. Yes, sir.

Q. When you came to pay the men from whom would you get their names? A. Farrell.

Q. Will you look around on your right at this group of defendants and tell me whether or not you find Farrell.

The Court: That was asked the other day, I think.

Mr. Murray: Did I ask about Farrell, if your Honor please?

The Court: I am quite sure you did. I think you began your cross-examination with that ques-
4811 tion.

Q. Well, have you seen Farrell after June of 1938? A. Yes, sir.

Q. And were you in constant communication with him up to June 1 of 1938? A. What do you mean, "constant communication"?

Q. He submitted the names of the men that he employed, didn't he? A. No, sir.

Q. Did he give you the names of the men after they had been employed? A. That is right.

Q. And when you made payments to those men did you send the checks to Farrell? A. Yes, sir.

Q. And is it a fact that you didn't send them directly
4812 to the men who were employed such as Randazzo, Venditti and the other names that you have mentioned? A. In most cases they were sent to Farrell.

Q. Yes? A. There were some instances where we sent them to the men themselves.

Q. Did you have telephone conversations with Farrell up to June 1, 1938? A. Yes, sir.

Q. Did you see him frequently? A. I saw him every time I was in New York.

Q. And is it true that when you came to New York you called on Farrell and had talks with him? A. Yes, sir.

Mr. Murray: That is all.
The Court: Any redirect?

Redirect examination by Mr. Ennis.

Q. Mr. Harris, Mr. Murray referred to a conversation between yourself and Randazzo about a man named Gows. Do you remember that occasion? A. Yes, sir.

Q. When was that? A. That was some time during the summer of 1938. 4814

Q. Well, was it before or after June 1 of 1938? A. I don't remember.

Q. You can't place the time? A. No, sir.

Mr. Ennis: That is all.
Mr. Murray: No further questions.
The Court: Witness excused. Next witness.

(Witness excused.)

SAMUEL T. SIMPKINS, of 14 Ward Street, Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows: 4815

Direct examination by Mr. Ennis.

Q. Mr. Simpkins, by whom were you employed in 1937? A. Mr. William H. Harris, the 3rd.

Q. What business? A. Salem Express, truck driver.

Q. What was your occupation? A. Truck driver.

Q. Did you drive trucks into New York City for Harris? A. In 1937.

Q. In the beginning of 1937 did you unload your own trucks? A. Yes, sir.

Q. Did a time come when other persons unloaded them? A. Yes, sir.

Q. When? A. Around June.

Q. Of 1937? A. 1937.

Q. Do you know the names of some of those other persons who unloaded your trucks? A. No, I can't recall exactly.

Q. You recall none of the names? A. Not in 1937, I don't remember.

Q. Well, do you recall the names of any persons who
4817 unloaded your truck up to June 1, 1938? A. Yes.

Q. What are those names? A. Tony. I know some of the first ones; I can't think of the last names.

Q. Well, give me the first names. A. Tony was one. William Farrell. Thomas Gows. That is about all I can remember.

Q. Well, will you stand and look around the court room and tell the Court and jury if you see any of those men or any other men who unloaded your truck during that period in New York City? Will you stand and look around? A. (Standing) I see one or two.

Q. Well, will you point them out? A. There is Tony (indicating).

Q. Where is the man you call Tony? A. The fifth fellow in the first row.

4818 Q. From your right end? A. From my right—the sixth one, I mean. The fellow with the light suit.

Q. The fellow with the light suit? A. Yes.

Q. Has that man unloaded your truck? A. Yes, sir.

Q. And you know him as Tony? A. That is right.

Q. Do you see anyone else? A. This fellow sitting back there with the blue suit (indicating).

Q. What row and what seat? A. Sitting crosswise, the fourth one there, the heavy-set fellow.

Q. On the bench? A. Yes.

Q. The fourth one from the— A. From this young fellow here (indicating).

Q. Has he worked on your truck? A. Yes, sir.

Q. Do you know his name? A. I do know it. I can't think of it.

Q. Do you see anyone else who worked on your truck? A. The third man in the last row.

Q. The third man from which end? A. The right.

Q. Do you know his name? A. Yes.

Q. What is it? A. Tony.

Q. Is that Tony? A. That is Tony.

4820

Mr. Ennis: May the clerk call the name of Tony Venditti?

The Court: Yes.

The Witness: That is right. Tony Venditti.

The Clerk: Tony Venditti.

(A man stood up.)

Q. Is that the name by which you know him? A. Yes.

Q. Is that the man? A. Yes.

Q. I understood you to say you know the sixth one from your right in the front row as Tony. A. That is what I said.

Q. Well, do you still——

4821

The Court: Well, were there two Tonys?

The Witness: No, I can't say that. I am mistaken on this name. I know the first, but I don't know the last name.

Q. But he did work on your truck? A. That is right.

Q. Did you deliver merchandise to Carl Schultz's place? A. Yes, sir.

Q. Where was that? A. 9th and Berry, Brooklyn.

Q. Do you recall any particular occasion when you delivered merchandise there and discussed the unloading of your truck? A. Yes, sir.

Q. When was such an occasion? A. Well, when I was going over there one morning——

Q. When was it? A. It was in June or July. I don't know exactly just what day.

Q. Of what year? A. 1937.

Q. What time did you arrive there in the morning? A. Around 10 o'clock.

Q. What merchandise did you have to deliver there? A. Glass bottles.

4823 Q. Was it a straight load? A. No.

Q. How much merchandise did you have to deliver there? A. I had about 200 cartons.

Q. How much were those cartons? A. They weighed about thirty-five or thirty-eight pounds a piece.

Q. Had you delivered such merchandise before? A. Yes, sir.

Q. How long would it take you to unload it? A. About a half hour—twenty minutes.

Q. Well, at that place did you unload your own merchandise? A. No, sir.

Q. Who unloaded it? A. The men at the platform. Carl Schultz's own help.

Q. Unloaded it? A. Yes, sir.

4824 Q. On this particular occasion did those men unload the merchandise? A. Yes, sir.

Q. Did you talk to anyone about that unloading? A. I talked to the receiving clerk.

Q. Did you talk to anyone else? A. Before I got in there; I couldn't get in there right away——

Mr. Maguire: I move that that be stricken.

The Court: Strike it out. The question was whether you talked with anybody.

The Witness: Yes.

Q. With whom did you talk? A. A fellow by the name of Klein, Red Klein.

Q. Will you stand and look around the court room and tell us if you see Red Klein here? A. It is so long, I don't know whether I would know him or not.

Q. Well, just look around. You can step down if you think you can get a better view. A. (Standing) No, I can't place him now.

Q. Will you be seated? You had a conversation with Red Klein? A. That is right.

Q. What was said?

Mr. Maguire: Objected to. 4826
The Court: Just a moment.

By the Court.

Q. How did you know that it was Red Klein? A. He told me his name.

Q. Do you remember what he looked like? A. He was a heavy-set fellow, kind of reddish hair.

Q. Had you ever seen him before? A. I saw him once since.

Q. How long after? A. Oh, I guess a year.

Q. Where? A. Over here right off of Laight Street.

Q. Was there anybody with him at that time? A. No; I was in a lunchroom and he came up in his truck. He stopped and talked to some fellows and then he spoke to 4827
me. That is all. I didn't say anything else to him.

The Court: I will overrule the objection.
Mr. Maguire: I respectfully except.

By Mr. Ennis.

Q. What was your conversation with Red Klein on that occasion? A. Well, I stopped in front of Carl Schultz

and his truck pulled up, and he asked me where I was going. I said, "I am going to unload." He says, "You are not going in there." I asked him why. He wanted to know where the City man was. I told him he was on another job.

Q. Yes? A. So he started arguing and told me if I went in there he would cause me some trouble, and I didn't get in there until about 2 o'clock in the afternoon.

Q. Well, did he say anything else? A. He said if I went in there he would kick the hell out of me.

Q. Did he say anything else? A. I don't just recall word for word what was said.

4829

Mr. Ennis: I request that this be marked as a Government's exhibit for identification.

(Marked Government's Exhibit 54 for Identification.)

Q. I show you Government's Exhibit 54 for Identification. Does that refresh your recollection or recall to you this man you have spoken about? A. Yes.

Q. Well, will you look at that? Now, will you stand and look around the court room again and take your time and tell us if you see that man you spoke to on that occasion? A. I think it is this first fellow on the bench (indicating).

4830 Q. Which fellow on the bench? A. That heavy-set fellow (indicating).

Q. You think that is the man you spoke to on that occasion? A. Yes, Klein.

Q. Mr. Simpkins, can you see the group of people you are looking at in that position? A. Yes, sir.

The Court: Can you see all of their faces in the position where you are?

The Witness: Yes, sir.

Q. Would you get down and look around, Mr. Simpkins?

Mr. Murray: Your Honor, might I at this time have the name of the man that the witness indicated placed on the record? His name is Bender, I think.

The Court: Let the record show that the witness indicated the defendant Bender as the person occupying the first seat on the bench whom he indicated as the person he knew as Red Klein.

Q. You can step closer, if you wish, Mr. Simpkins. A. I can see. That is the only man I really see.

Q. I show you Government's Exhibit 54 for Identification again. In your view is that the man you spoke to? A. Yes, that is Klein. 4832

Q. That is Klein? And that gentleman that you indicated is Klein? A. Not according to the picture.

The Court: No, not according to the picture; according to your recollection.

By the Court.

Q. Has the defendant Bender red hair? Look at him over there; has he got red hair? A. Yes.

Q. Bender? A. Oh, no.

Q. Well, didn't you say that the man you saw had red hair? A. Yes. It must be the second man here on the first row, the chairs (indicating). 4833

Mr. Maguire: May the record show that Mr. Zollinger has been identified by this witness?

The Court: The record will so show, without objection.

By Mr. Ennis.

Q. Do you wish to look around any longer? A. No.

Q. Will you take your seat again, please? A. (Returning to stand). Yes.

Q. Before this occasion at Carl Schultz, did you talk to any person in New York City about unloading your trucks? A. Yes.

Q. When was the first occasion? A. Around June.

Q. Where? A. Different places in the City. I can't just say exactly where.

Q. Well, do you recall the first occasion? A. No, I do not.

4835 Q. Well, do you recall the place? A. No.

Q. Do you recall the place of the conversation on any particular occasion? A. A lot of fellows talked to me down at Laight Street where we used to stop.

Q. At what time? A. From 7 o'clock in the morning on up; different times of the day.

Q. How did you come into New York to deliver? Over what road? A. No. 25 into the tunnel.

Q. Through the tunnel? A. Yes.

Q. After you came through the tunnel did you park? A. Yes, sir.

Q. Did you park before any other man unloaded your truck? I mean in the period before any man unloaded your truck? A. Yes, sir.

4836 Q. Well, did you, coming through the tunnel, drive directly to where you were delivering your goods?

Mr. Maguire: I object.

The Court: Sustained. Better let him testify.

Q. Turning your mind back to the first time when you were stopped where were you? Were you on your truck when men spoke to you? A. Yes, sir.

Q. Were you moving? A. Yes, sir.

Q. Well, where were the men who spoke to you? A. The first time I was stopped at the light.

Q. Where? A. I was stopping at the light where the men jumped up on the truck.

Q. What?

The Court: Traffic light. He stopped at a traffic light. Sometimes they do that.

Q. Where was that traffic light? A. Laight Street.

Q. Is that near the Holland Tunnel? A. Yes, sir.

Q. And some men jumped up on your truck? A. Yes, sir.

Q. Do you know who those men are? 4838

Mr. Maguire: Objected to.

The Court: Sustained as to form.

Q. Had you ever seen those men before? A. No.

Q. Have you ever seen them since? A. Not those men, no.

Q. Have you ever seen them in the company of any other persons you know? A. Not that I know of, no, sir.

Q. What did you see those men do?

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Ennis: That is all.

The Court: Cross-examine. 4839

Cross-examination by Mr. Murray.

Mr. Murray: May I ask that the first man that the witness indicated as the man he had a conversation with at Schultz's place in Brooklyn be permitted to stand, if your Honor please?

The Court: Well, which one do you want to stand?

Mr. Murray: The first one. I prefer not to put the name on the record now.

The Court: Well, as long as you indicate who the person is you want to stand.

Mr. Murray: Will you stand, please, and will you stand, please (addressing two persons)?

(Two men stood.)

The Court: Two men are standing in the order in which they were pointed out by the witness.

Mr. Murray: That is right; and I will put the
4841 names on the record before I am through.

By Mr. Murray.

Q. Now, was it one of those two men who now stand in the court room that had this conversation with you in Brooklyn at Schultz's place? A. Yes, sir.

Q. Which one? A. This man right over there, the first one (indicating).

Q. Do you know what his name is? A. Klein.

Q. Do you call him Red Klein? A. Yes, sir.

Mr. Murray: May it be noted now, if your Honor please, that the man who stands is named Zollinger?

4842 The Court: Yes.

Q. Now will you look at the first man and tell me now whether or not he was the man you had this conversation with? A. I don't think so.

Mr. Murray: This man's name is Bender that I now refer to, if your Honor please.

The Court: All right.

Q. Is it not a fact that you don't know whom you talked to in that instance in Brooklyn? A. I can't recall it now.

Q. And are you now in a state of mind where you say you could not identify the person? Do you understand the question? A. I didn't, no.

Q. Well, are you now able to say who it was that you talked to on the occasion you mentioned? A. Yes.

Mr. Murray: That is all.

If your Honor please, I move to strike out the testimony of the witness.

The Court: Strike it out so far as the incident at Schultz's is concerned.

4844

Mr. Ennis: If the Court please, before leaving that matter completely, might I first request your Honor that the defendants be asked to sit erect in their chairs? Now, for example, there is one gentleman in the back row, your Honor——

The Court: Now, just a moment. Don't let's have any comment on the matter. I can't put anybody up in a straitjacket.

Mr. Ennis: No, I don't wish that, your Honor.

Redirect examination by Mr. Ennis.

Q. I request you to again look at Government's Exhibit 54 for Identification. Will you do that?

4845

Mr. Murray: Now, if your Honor please, I object on the ground that the subject matter has been thoroughly exhausted.

The Court: I would like to look at that exhibit myself.

(Handed to the Court.)

The Court: I will allow it.

Q. Will you look at it?

By the Court.

Q. You are looking at the face of it, I take it? A. Yes.

Q. Have you looked at the back of it? A. No.

Q. Either now or when it was shown to you before? A. No.

Q. Have you ever seen this picture before today? A. Yes.

Q. When? A. Friday.

By Mr. Ennis.

Q. Now, can you say whether in your recollection this is the person you spoke to on that occasion?

4847

Mr. Murray: I object, if your Honor please.

The Court: I will allow it.

A. Yes; that is Klein.

Q. That is the man you spoke to on that occasion? A. Yes.

Q. Well now, will you stand and look at the man you identified in the front row, and will you tell us if that appears to be the man you spoke to on that occasion?

Mr. Murray: If your Honor please, I object on the ground that the question has already been answered.

The Court: I will allow him to state. This all goes to the question of the weight to be given to his

4848 testimony. It is a matter for factual consideration. You may answer.

A. I can't recognize anyone there now.

Q. Will you step down?

The Court: The question was, having looked at the photograph shown you, are you able to say whether the person in the chair next to the empty

chair, who previously stood up, is the man shown by that photograph?

The Witness: By that photograph?

The Court: Is he the man in the photograph which has just been shown you?

The Witness: No.

Q. Well, would you step down and look around and tell us whether that is the man you spoke to on that occasion; or if not, whether the man is here? Will you step over there, please? A. (Stepping down from stand) I can't recognize him.

4850

Q. Well, would you say that the gentleman you did point out is not the person? A. That is who I think it is, Klein.

Q. You think he is the man you spoke to on that occasion? A. I think so.

Mr. Ennis: We consent, your Honor, that that episode at Schultz's be stricken out.

The Court: It is already out.

Mr. Ennis: That is all, your Honor.

Mr. Murray: No further questions.

The Court: Witness excused. Next witness.

(Witness excused.)

4851

JOHN LESTER FINLAW, residing at Salem, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows

Direct examination by Mr. Ennis.

Q. Mr. Finlaw, by whom were you employed in 1937? A. Salem Express.

Q. Were you a member of any union at that time? A. Local 590.

Q. Local 590 of what union? A. A. F. of L.

Q. Where is its headquarters? A. Vineland, New Jersey.

Q. At the beginning of 1937 did you drive trucks into New York City? A. Yes.

Q. Did you unload those trucks? A. Yes, sir.

Q. Did a time come when you did not do your own unloading? A. Yes.

Q. When? A. About April, 1937.

Q. Do you know the persons who did the unloading? A. Yes.

4853

Q. Do you know their names? A. Yes.

Q. Will you state them? A. William Farrell, Thomas Gows—that is all I remember now.

Q. Did any other persons do unloading, or unload your trucks? A. At certain times they would.

Q. Well, what times? A. Well, when we was in need of more men to take care of the trucks.

Q. What year? A. 1937.

Q. 1937? A. Yes.

Q. Do you know the names of any of those men? A. The fellow's last name I think was Katz, I think it was.

Q. Katz? A. I am pretty sure it was.

Q. Will you stand and look around this court room and tell this Court and jury if you see that man whom you

4854

call Katz? You may stand down if you can't from there. A. (Standing) I don't see.

Q. You don't see Katz? A. No.

Q. Do you see in the court room any of these other men who unloaded your truck? A. The fourth one in the front row. I remember him.

By the Court.

Q. From which end? A. From the left.

Q. From your left end? A. Yes.

By Mr. Ennis.

Q. Did he work on your truck? A. At certain times, yes, sir.

Q. Do you know his name? A. No, I don't.

Q. Did you ever see him in the company of Farrell? A. Yes, I have.

Q. You mean the chap with the dark coat and the light trousers? A. That is right.

Q. When did you see him in the company of Farrell? A. Around April of 1937. April, May or June.

Q. Where? A. At Laight and Varick Streets.

Q. Out on the street? A. Yes, on the corner.

4856

Q. Was there anyone with them whom you know? A. What, with Farrell?

Q. And with this man that you have identified as being with him. A. There used to be a——

The Court: No. Was there anybody else there whom you know, was the question.

The Witness: Yes.

Q. Who? A. Robert Dillon.

Q. Did he sometimes work on your truck? A. Yes.

Q. Will you stand and tell the Court and jury if you see him in the court room? A. (Standing) The third man in the back row (indicating).

1857

The Court: What do you mean by the back row?

The Witness: All the way to the left (indicating). Where the three men are sitting.

Q. What kind of shirt has he on? A. It looks like lavender. I don't know.

Q. Well, is it the last man on that bench (indicating)? A. Yes, next to the wall (indicating).

Mr. Ennis: May the clerk call the name of Robert Dillon?

The Court: Yes.

The Clerk: Robert Dillon.

(A man stood up.)

Q. Is that the man? A. Yes.

Q. Now in addition to those men do you recall the names of any other men who worked on your truck? A. I don't remember.

Q. Do you remember the name of the fourth man from the left in the front row whom you identified as having worked on your truck? A. All I know is Bernie.

4859

Q. Bernie? A. I don't know the rest of his name.

Mr. Ennis: May the clerk call the name of Bernard Randazzo.

The Clerk: Bernard Randazzo.

(A man stood up.)

Q. Is that the man? A. Yes, sir.

Q. Do you recall any conversation with Farrell in a lunchroom in the spring of 1937?

The Court: Yes or no.

A. Yes.

4860 Q. Did you have that conversation with him? A. No.

Q. Well, were you present at the conversation? A. Yes, sir.

Q. And with whom was Farrell talking? A. Some fellow they called Bill.

Q. Bill what? A. Bill Simpkins or Simpson or something like that.

Q. Simpson? Something like that? A. Yes.

Q. Will you stand and look around the court room and tell us if you see that man here.

The Court: Which man? Simpkins?

Mr. Ennis: Yes. The man whom he saw with Farrell.

(Witness stands.)

Q. You may step down and look around if you can't see well there. A. The last man in the back row, I think.

Q. The last man in the back row? A. Yes.

Mr. Enpis: May the clerk call the name of Bill Simpson? 4862

The Court: Yes.

The Clerk: William Simpson.

(A man stood up.)

Q. Is that the man? A. That is right.

Q. Will you take your seat again. What was that conversation you heard between Farrell and Simpson?

Mr. Maguire: I object to that as not binding on the defendants.

The Court: Overruled.

Mr. Maguire: Exception.

A. What was that question again? 4863

Q. What was the conversation you heard between them on that occasion? A. I heard them say they were going to try to stop trucks coming out of South Jersey and put a Local 807 man on.

Q. What else did you hear them say? A. They said they considered Local 590 running out of, or over a 40-mile radius, had to have an 807 man on.

Q. Do you remember anything else they said? A. No.

Q. I understand you to say that a man by the name of Farrell worked on your truck? A. That is right.

Q. Did he unload merchandise at the warehouse? A. That is right.

Q. On any such occasion did you ever see Bob Dillon? A. On several occasions.

Q. When were they? A. The days we needed other men to unload the trucks.

Q. When were they in point of time? What year? A. Around 1937; the first of 1938.

Q. Well, do you recall any such occasion when Farrell was working on your truck and you saw Bob Dillon?
4865 A. No, I don't remember.

Q. You don't remember any such occasion? A. No.

Q. Where you saw them together? A. No.

The Court: You mean you saw them together but you can't recall now the particular place?

The Witness: That is right.

Q. But you did see them together during that time——

The Court: He said so two or three times.

Q. Well, on any such occasion do you recall hearing any conversation between them? A. Just the one I just stated.

4866 Q. Just the conversation you have stated. A. Yes, about trying to stop other out of town trucks.

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out.

Q. Was Bob Dillon present at that conversation?

The Court: He said so.

Q. Do you recall ever being stopped at the George Washington Bridge?

Mr. Maguire: I object to the form of the question.

The Court: I will allow it.

Mr. Maguire: Exception.

A. What was that question?

Q. Do you recall ever being stopped at the George Washington Bridge? A. No.

Q. Do you recall any conversation by Farrell about stopping anyone at the George Washington Bridge? 4868

Mr. Maguire: I object to the form of the question.

The Court: Sustained.

Q. Did you have any other conversation with Farrell? A. I have had several conversations.

Q. Well, do you recall any particular conversation? A. No. I don't remember.

Q. But you have had several conversations? A. Yes, sir.

Q. Do you recall any conversation with him about Byrnes' drivers? A. Yes.

Q. Where was that? A. The place?

Q. Yes. A. I don't remember the place. 4869

Q. Was it in New York City? A. Yes.

Q. When was it? A. The time?

Q. Yes. A. I couldn't say.

Q. What year was it? A. The early part of 1938 I guess.

Q. When? A. The early part of 1938.

Q. Was anyone present in addition to yourself and Farrell? A. Yes, several drivers.

Q. Several drivers? A. Yes, sir.

Q. Do you know who any of them were? A. Several came out of Salem, the same place I did.

Q. What was said?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. They were telling us——

The Court: Well, who was telling you? Who spoke?

The Witness: Farrell.

4871

The Court: What did Farrell say?

The Witness: He was telling us about one of R. A. Byrnes' drivers getting beat up around the George Washington Bridge.

Q. What else did he say about it? A. That is all he said. Just how they tried to gypsy a load up in Northern New York, up around the Washington Bridge.

Mr. Maguire: I move to strike that answer out, if your Honor please.

The Court: Let me hear the answer.

(Answer read.)

The Court: Motion denied.

4872

Mr. Maguire: Exception.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. How long did you continue to work for Mr. Harris? A. Continue to work?

Q. Yes. A. Since 1936.

Q. Are you working for him now? A. Yes, sir, at present.

Q. When was the last time that you saw Farrell? A. About eight o'clock this morning.

Q. Is he still working for you? A. Yes.

Q. Now, did you know whether or not Mr. Farrell employed men of Local 807 to work on Mr. Harris' trucks? A. No.

Mr. Cahill: I object.

The Court: Overruled.

Q. Well, when you came into New York, say, up to June 1, 1938, did you consult Mr. Farrell as to who would work on the trucks? A. No, sir, I didn't consult anybody. He would——

4874

Q. Well——

Mr. Cahill: May we have the rest of the answer, your Honor?

The Court: Have you finished your answer?

The Witness: Yes.

The Court: Do you want it read, Mr. Cahill?

Mr. Cahill: No. I thought he started another word.

The Court: Read the answer.

(Answer read.)

The Court: Is that your complete answer?

The Witness: I was going to say he would tell me where they went to work.

4875

(Answer read.)

The Court: Is that what you said?

The Witness: Yes.

Q. What time did you ordinarily leave Salem, New Jersey, to take your loads to New York? A. 2.30.

Q. In the morning? A. Yes.

Q. What time ordinarily would you reach New York? A. 6.30 or 7 o'clock.

Q. Now, did you deliver loads from Salem, New Jersey, to different places in New York? A. Yes.

Q. Where did you deliver in New York? A. Brooklyn, Long Island, Manhattan.

Q. Where in Manhattan? A. Franklin Street.

Q. Do you know the name of the concern? A. Strohmeyer & Arpe.

Q. Well now, do you know what time their place opened in the morning? A. Eight o'clock.

Q. Is it correct that sometimes you got in at 6.30 in
4877 the morning? A. That is right.

Q. What did you do between 6.30 and 8? A. Lay around in the truck or else go in the lunch car.

Q. Would you sleep on your truck? A. Sometimes.

Q. Did you have a helper? A. No.

Q. Did you ordinarily have more than one place to deliver loads to? A. Sometimes.

Q. Well, when you came into New York were there occasions in which you made deliveries here in the Borough of Manhattan? A. Yes.

Q. And then did you make additional deliveries in Brooklyn? A. Sometimes.

Q. Did you during the same operation make deliveries in Long Island City? A. Not that I recall.

Q. But at least there were occasions when you made
4878 deliveries in Manhattan and then went to Brooklyn and made deliveries there, is that correct? A. Yes, sir.

Q. Well, now, do you know what position Mr. Farrell held in the union? A. No. Just as a City man.

Q. Did you ever hear him referred to as the shop steward? A. I heard the City men say that.

Q. Well, did Mr. Harris ever say it to you? A. No.

Q. Did you get instructions when you left Salem to meet Mr. Farrell in New York? A. Not exactly Mr.

Farrell. We were told to pick up a union man in New York City.

Q. Who told you, if you know? A. The dispatcher in Salem.

Q. What is his name? A. Elmer Slopey.

Q. Was that dispatcher employed by your concern? A. Yes.

Q. Do you know whether or not he would communicate with Mr. Farrell by telegram or telephone? A. No.

(Short recess.)

(The clerk called the roll of defendants and all were present.) 4880

By Mr. Murray.

Q. When you came to New York to deliver your load, did you have an arrangement whereby you would meet Farrell? A. Didn't I answer that question once?

The Court: The stenographer will repeat the question.

Q. (Read.) A. Elmer Slopey in Salem would tell us to pick up the union man. He didn't say anything about Farrell.

Q. Well, did you go anywhere to meet the union man when you got to New York? A. Waited on Laight Street and Varick Street. 4881

Q. And would you make an arrangement with the union man whereby he would be informed at what time you would arrive in New York? A. Well, I always came about 8 o'clock.

Q. Well, did Mr. Farrell tell you what particular union man would meet your truck in New York? A. Sometimes he would tell us who to take.

Q. Well, when he told you who to take, do you remember some of the men that you did take? A. I remember taking Bob Dillon.

Q. How often? A. I could not say. I don't remember.

Q. Was it more than once? A. Yes.

Q. Was it more than three times? A. It could have been. I don't remember.

Q. Do you remember the last time that Bob Dillon worked on your truck? A. No, I do not.

Q. You testified that in a lunch room you heard a conversation in which Farrell took part; is that correct? A. He was one of them, yes.

4883 Q. Who else was there? A. There were quite a few union men there.

Q. Do you know who they were? A. No.

Q. Do you know when that conversation took place? A. The day?

Q. Yes. A. No.

Q. Do you know what year? A. It was the later part of 1937, the early part of 1938.

Q. Is that the best you can do? A. Yes; it has been quite some time.

Q. Do you mean that it was in the winter of 1937 or 1938? A. No, it was early in the spring 1937; it was at Munson's Diner.

Q. Well, was that the only conversation you ever heard about Local 590 men who were working outside a radius
4884 of 40 miles from New York City requiring the service of the Local 807 men? A. I heard several times.

Q. When was the last time you heard it? A. I don't remember.

Q. Do you know what year it was? A. No, but I have heard it recently.

Q. Well, weren't those conversations that you heard after June 1, 1938? A. Some were and some were not.

Q. The one that you particularly remember you say was in the spring of 1937? A. Yes.

Q. Was that the conversation that you heard between Farrell and Dillon in the diner? A. What conversation was that?

Q. Well, what conversation did you tell the jury you overheard before recess? A. I overheard one about stopping out-of-town trucks, taking other companies that came out of Salem, going to organize them.

Q. You know that is the conversation I am referring to, don't you? A. Yes.

Q. Well, was that conversation addressed to you or did you overhear someone talking? A. I overheard them talking.

Q. Were you in the party at the time you overheard 4886
that conversation? A. Yes.

Q. What were you doing, eating? A. I was, yes.

Q. Were you eating with Farrell? A. I was eating by myself.

Q. And this conversation that you heard Farrell have with somebody else you simply overheard, isn't that right? A. That is right.

Q. You heard someone talk about one of Byrnes' drivers, you stated, concerning an incident at the George Washington Bridge, is that right? A. That is right.

Q. And when did you hear that conversation? A. The later part of 1937.

Q. Well, did you know that your concern had signed a contract with Local 807? A. At that time?

Q. At any time. A. I thought they had. I never saw 4887
it.

Q. And were the conversations that you heard after your concern had signed the Local 807 contract?

Mr. Cahill: I object to the form of the question as indefinite.

Mr. Murray: All right, I will withdraw it.

Q. Were the conversations you say you heard had after you heard that Local 807 had signed a contract with Harris?

Mr. Cahill: I still object to it as indefinite and vague.

The Court: Sustained.

Q. Well, when did you overhear the conversation?

Mr. Cahill: I still object to it as indefinite.

The Court: I will allow that.

The Witness: What was that question?

4889 Mr. Murray: May I have it repeated, if your Honor please?

The Court: Yes. The stenographer will repeat it.

Q. (Read.) A. About stopping out-of-town trucks.

Q. About the George Washington Bridge incident. A. That was after they started organizing the union.

Q. Well, do you know when that was, what year? A. 1937.

Q. What time in 1937? A. It was getting around winter time, around November or December.

Q. At least it was after May of 1937, wasn't it? A. That is right.

Q. And at that time when you drove into New York
4890 you were having Local 807 men on your trucks, weren't you? A. That is right.

Q. This conversation that you say you heard concerning the George Washington Bridge incident—was that conversation directed to you or did you overhear it? A. It was sort of directed to me. There were four or five other drivers there.

Q. Whom was the conversation between? A. Farrell and these Salem drivers.

Q. Did Farrell say in substance that he had heard that one of R. A. Byrnes' drivers had been beaten on the George Washington Bridge? A. That is right.

Q. He did not say that he had beat him, did he? A. No.

Q. He did not say that he caused him to be beaten, did he? A. No.

Q. He was simply relating what he said someone had told him, wasn't he? A. Yes.

Mr. Murray: That is all.

Mr. Ennis: No further questions.

The Court: Witness excused. Call the next witness. 4892

(Witness excused.)

Mr. Boudin: If your Honor please, at this time we move to strike out the testimony of the last witness with respect to an alleged incident on the George Washington Bridge.

The Court: Well, I will deny it at this time. You may renew it.

Mr. Boudin: Exception.

RAYMOND A. BYRNES, residing at Mullica Hill, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows: 4893

Direct examination by Mr. Ennis.

Q. Mr. Byrnes, what is your business? A. Trucking business.

Q. What is the name of your company? A. R. A. Byrnes, Inc.

Q. And where is it located? A. Mullica Hill and Swedesboro.

Q. In New Jersey? A. That is right.

Q. Between what points did you truck merchandise in 1937? A. The franchise called for 13 of the eastern states.

Q. Did you truck merchandise between Swedesboro and New York City? A. Yes, I did.

Q. What kind of merchandise? A. Mostly canned goods.

Q. About how many trucks a week did you send to New York at that time? A. Well, it varied. We were running some days, oh, from two to seven; sometimes more.

Q. How many days a week? A. Five days a week.

Q. At the beginning of 1937 who unloaded your trucks in New York? A. Our own men.

4895 Q. How many men did you send on a truck? A. Two.

Q. Were any of your men at that time members of a union? A. Yes, they were all members.

Q. Of what union? A. 590 in Vineland.

Q. Is that the Teamsters Union? A. Yes.

Q. Did you have a contract with 590 at that time? A. Yes.

Q. Did a time come when your own men did not unload your trucks in New York City? A. Yes, it did.

Q. When was that time? A. It was about the middle of March in 1937.

Q. Did you come to New York City about that time? A. Yes, right shortly after that.

Q. Whom did you meet? A. Well, I met several union men: Robert Dillon and Bernard Randazzo and Frank

4896 Downs.

Q. Where did you meet them? A. I met them at R. C. Williams, 25th and Tenth Avenue.

Q. Will you stand, Mr. Byrnes, and look around the court room and tell the Court and jury if you see any of those three persons here? A. Yes, Randazzo, the fourth one or third one in the fourth seat (indicating).

Q. In what row? A. First row.

Mr. Ennis: May the clerk call the name of Bernard Randazzo?

The Court: Yes. Yes.

The Clerk: Bernard Randazzo.

(A man stood.)

Q. Is that the man? A. Yes. And Frank Downs, the third one in the second row (indicating).

Q. From which end? A. This end (indicating).

Mr. Ennis: May the clerk call the name of Frank Downs?

The Court: Yes.

The Clerk: Frank Downs. 4898

(A man stood.)

Q. Is that the man? A. That is him. And Robert Dillon, all the way over in the corner (indicating).

Q. What row? A. Facing this way in the back row.

Q. The one near the wall? A. Yes.

Mr. Ennis: May the clerk call the name of Robert Dillon?

The Court: Yes.

The Clerk: Robert Dillon.

(A man stood.)

Q. Is that the man? A. That is him.

Q. Do you see anyone else here who was present at that 4899
conversation? A. No, I don't.

Q. Will you take your seat again? Now, what was the conversation on that occasion?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled. Fix the date as near as you can.

A. It was the middle of March or a little after that.

Q. In 1937? A. Yes.

Q. At R. C. Williams? A. That is right.

Q. What was the conversation? A. Well, I asked him why we should have to pay this $9.42 to unload, and he said that we had to hire City men where we was over 50 miles out of New York City.

Q. Did you have any trucks in New York City on that day? A. Yes, that day I should judge we had three. Two was at Williams and one at Leggett's.

Q. What time of the day was this conversation? A. I would say at 10.30.

Q. Were your trucks unloaded at that time? A. No,
4901 they would not let them unload.

Mr. Maguire: I move that that be stricken.

The Court: Strike it out. Answer yes or no.

The Witness: No.

The Court: The answer is no.

Q. What else was said? A. They said I had to use a City man.

Q. Who did the talking? A. Robert Dillon.

Q. Did he say anything else? A. He went to the receiver and told the receiver not to receive the goods, and the receiver went and got the steward; the shop steward there, and told me to pull out unless I would pay them. I told him I could not afford to pay it because some of the
4902 small, straight loads, some of the small trucks we did not have very much profit in them to begin with.

Q. How long did it take to unload some of those trucks? A. Well, some of the small ones, some of the straight ones like that, I should say about an hour.

Q. What else was said? A. Well, he said I would have to use them and I would eventually have to sign a contract with 807; but I did not sign it right away that day.

Q. Did you say anything about signing a contract with 807? A. No. I told him that I had a contract with 590.

and they claimed that was good anywhere in the United States, and why sign any more?

Q. What did Dillon say to that? A. Well, he said I would eventually have to sign it before I could unload.

Q. Who unloaded your trucks that day? A. Dillon and Randazzo.

Q. Did you pay them any money? A. No, I paid them the following Saturday, I think.

Q. How much did you pay them for unloading that day? A. I paid them $18.54, I think it was.

Q. You had three trucks in town that day? A. That is right.

Q. Did you subsequently again come to New York on the business of unloading your trucks? A. Yes; on April 17th. 4904

Q. On April 17th? A. Yes.

Q. How do you remember that date? A. Well, I looked it up in my books.

Q. You did? A. Yes.

Q. Did you have any trucks in New York City on that day? A. Yes.

Q. How many? A. I just forget how many. I just forget how many I had that day. And then I came back on the 29th.

Q. Well, on the 29th of what? A. Of April.

Q. Now, on the 17th of April did you have any conversation about unloading your trucks? A. Yes, there was some conversation about some overtime I owed them, some back overtime. 4905

Q. Whom did you talk to? A. I talked to Dillon.

Q. Well, where did you talk to him? A. I was at the Munson Diner. It was at 26th and 11th Avenue.

Q. Was anyone with him? A. Yes, there was several there.

Q. What was said? A. Well, they wanted this back overtime and so on, and I would have to pay them before they would go in and unload.

Q. What did you say? A. I think I added it on the following Saturday, on a check the following Saturday, if I recall right.

Q. Did you tell them anything about paying this overtime? A. Yes. I told them that I did not want any overtime, that the places were mostly closed; that I did not see how they could get any overtime because they never started on time.

Q. Was anything else said? A. No. I think that is all that day.

Q. Did you come to New York again on this business of unloading your trucks? A. Yes.

4907 Q. When? A. It was the 29th of April.

Q. Of April? A. Yes.

Q. Whom did you see that day? A. Well, I seen quite a crowd. We met at the Munson Diner again that day. There was quite a few there. There was I would say 50 fellows. That was the day we had 7 trucks in New York that morning.

Q. Where were the trucks? A. They were at Munson Diner.

Q. They were parked there? A. Yes.

Q. And did you know any of this crowd of 50 persons? A. I just knew the three of them.

Q. Who? A. Dillon, Randazzo and Downs.

Q. Where were they standing with respect to this crowd? A. They were standing on the sidewalk by the Munson
4908 Diner.

Q. Where was the crowd? A. They were standing in back of us, next to the diner.

Q. Did you have any conversation with any of those persons there? A. I had with Dillon. Dillon said I would have to sign a contract before I could unload any more.

Q. What did you do? A. Well, I told him I did not want to sign any contract; that I would pay him to go ahead and let the trucks unload, but I did not want any

contract because I had one, and our shipper did not want us to sign any contracts. So he said I would have to. So we got in a car and went up to the union hall.

Q. Do you remember what day of the week that was? A. Wednesday.

Q. What time did those seven trucks come into New York? A. They left home Sunday night somewheres around midnight.

Q. When you saw them on Wednesday morning had they yet been unloaded? A. No, they had not.

Q. Before you got into a car and went up to the union hall, was there any further conversation about your trucks at the Munson Diner? A. There was someone in the back, 4910
I don't know who, made a remark it would be a shame——

Mr. Boudin: I object, if your Honor please. I object to it.

The Court: Overruled.

Mr. Boudin: Exception.

A. (Continuing) —it would be a shame to upset such nice trucks. Three of them was brand new, the first trip.

Q. How much did they cost you? A. $5,500 apiece.

Q. With whom did you go to the union hall? A. With Dillon.

Q. Did you meet anyone there? A. At the union hall?

Q. Yes. A. A man by the name of Larkin.

Q. Anybody else? A. No, that is all. 4911

Q. Did you have a conversation? A. Well, he showed me the contract and I read it over and went over the contract with him to the extent that we could not afford to do it and pay such wages for what time these men was giving us.

Q. Well, what else was said? A. Well, he said I would have to sign it or I could not unload. So I wanted to get the trucks out of New York, so I signed it, and I told him

I was signing it so I could move the trucks; I wanted to get them home.

After we signed it we went back to the Munson Diner and they started out. I think it was either three or four unloaded that day, Wednesday afternoon, and the balance Thursday.

Q. Now, before you left the union hall did you have any conversation about what local men would work for you? A. Well, I asked him if I could pick my own men. I had a couple of other fellows that had approached me that said they would give me a day's work. But Dillon said no, he had made the job and he was going to take charge of un-

4913 loading and dispatching of the trucks.

Q. Well, was there any talk about the amount of work that would be done by these City men? A. They were supposed to give us eight hours——

Mr. Boudin: I object to the form of the question.

The Court: No. Read the question.

(Question read.)

Mr. Boudin: I object to that unless the time is stated and the person with whom the conversation was had.

The Court: He may state whether there was a conversation, yes or no, and then fix the time.

4914 Q. At this meeting at the union hall where Larkin and Dillon and yourself were present, was there any talk about the amount of work to be done by 807 men? A. Yes.

Q. What was said? A. He said that the men would give us eight hours a day.

Q. Who said? A. Mr. Larkin.

Q. Said what? A. Said that they would give us an eight-hour day.

Q. Yes? Well, had 807 men worked for you before that time? A. Yes.

Q. Well, was there any conversation about that? A. Yes.

Q. What was said? A. Well, I told them that they did not give us an eight-hour day. That is, one day not so long before that we had two trucks at Williams, and they were both straight stops, and then there was another truck, small one, with six ton on, small stops, and the man would not take it. He said he had done his day's work; he was not allowed to take two trucks whether he worked eight hours a day or not.

Q. How long did it take? A. I would say right around 4916
two hours, maybe a little better.

Mr. Boudin: If your Honor please, before we proceed further I move to strike out the answer to the question as to the conversation with Larkin on the ground that it was merely a statement by this witness which did not call for any answer by Larkin.

(Question read as follows: "Q. What was said?")

The Court: Denied.

Mr. Boudin: Exception.

Mr. Ennis: I request this to be marked as Government's Exhibit for Identification.

The Court: Mark it.

(Marked Government's Exhibit 55 for Identification.) 4917

Q. Mr. Byrnes, I show you Government's Exhibit 55 for Identification. Do you recognize your signature on that paper? A. Yes, I do.

The Court: Whose is it?

The Witness: R. A. Byrnes, Incorporated, signed Raymond A. Byrnes.

The Court: Who signed it?

The Witness: I did.

Q. When did you sign that paper? A. On April 29, 1937.

Q. Do you remember where you signed it? A. Yes.

Q. Where? A. In the union hall, 704 Varick Street.

The Court: Was that the paper that was handed to you by Mr. Larkin, as you previously testified to?

The Witness: It was.

Q. Did anyone else sign it in your presence? A. Robert
4919 Dillon.

Q. Anyone else? A. That is all. Mr. Larkin.

Q. Did you see Larkin sign it in your presence? A. Yes, sir.

Mr. Ennis: I offer it in evidence (handing to counsel for defense).

(Government's Exhibit 55 for Identification received in evidence.)

Mr. Ennis: This paper dated May 19, 1937, purports to be an agreement between R. A. Byrnes, Inc., and Truck Drivers & Chauffeurs, Local 807, and is signed for the firm of R. A. Byrnes, Inc., Raymond A. Byrnes, and for Local 807 it appears to be W. L.
4920 Larkin, and it also bears the signature of Robert Dillon and on the back it has the name Robert Dillon, Bernard Randazzo, Frank Downs and W. Farrell.

Q. Did you see the names on the back of that paper written on there? A. Yes.

Q. At the time? A. Yes.

Q. You signed the paper? A. Yes.

Q. Was there any talk about those names? A. Dillon wrote them on there and he said they would take charge of our trucks. He was the first man, Randazzo the second, Downs the third and Farrell the fourth.

Q. Did you say anything about that? A. Well, I approached him again about picking another man——

Q. No. At that time? A. No.

Q. Did you have any further conversation with Dillon about that? A. No. We just went back to the trucks and he started out to unload.

Q. Do you recall any subsequent conversation with Dillon in Swedesboro? A. Yes. He came down around the 1st of July about some overtime; stopped at our place 4922
in Swedesboro.

Q. Was anybody with him? A. Yes. Randazzo and Farrell were with him and Downs.

Q. And Downs? A. Right.

Q. What was said?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was said at that time? A. Well, he stopped to collect his overtime. I think he was going to Harris' at the same time.

4923

The Court: Strike that out, what you think. What did he say? That was the question.

The Witness: I asked him if he didn't agree not to have any overtime and get off the trucks when the time was up, when eight hours was up, but he pointed out different dates that he worked overtime, and I asked him where he got out. He said it was on the way back. He said it is on the way

back from Brooklyn and places like that; we had to taxicab them back rather than take them back in the tractor and trailer.

Q. Where did you take them to? A. Well, we first took them to the Munson Diner. Then we started dispatching the trucks from Hudson and Beach Streets. So from then on we had to take them back to Hudson and Beach.

Q. Where did you have to take them back from to Hudson and Beach? A. Whichever warehouse we had our load at. If it was R. C. Williams in 25th Street; if it was over in Brooklyn; whichever warehouse we were unloading our
4925 trucks.

Q. Before you used 807 men on your trucks how did you return to New Jersey? How did your trucks return to New Jersey from R. C. Williams, for example? A. We had tickets on the Jersey Central. If we were uptown we took the 23rd Street ferry. That would leave us only a few City blocks to run. If we were downtown we used Liberty Street.

Q. After you had 807 men did you go directly from R. C. Williams to this 23rd Street ferry? A. No. We usually left the men at the Munson Diner and then when we started dispatching down at Hudson and Beach Streets we would have to take them back to Hudson and Beach where we picked them up.

Q. Is that near the Holland Tunnel? A. It is the other
4926 side of the Holland Tunnel a few blocks.

Q. On this occasion in Swedesboro when you had this talk about overtime did you say anything to Dillon and the others about your tractors going back downtown instead of using the 23rd Street ferry? A. Yes, I did.

Q. What did you say? A. Well, I told him I didn't see why we had to run back. I even offered to pay their way back on the elevated or subway. In fact, I went to the union hall about that to talk to Mr. Devery. He said we had to take them back where we got them.

Q. Was there any talk about paying them? Paying them while you were taking them back? A. If they were on the truck over the eight hours we had to pay them $1.70 for taking them back.

Q. When your trucks were taking them back were your trucks empty? A. Yes, they were.

Q. Subsequent to that time did you have any further conversations with Dillon in New York City? A. No. I think that is the last we had until the 7th of July.

Q. The 7th of July? A. Yes.

Q. Of what year? A. 1937.

Q. Did you have a conversation with him at that time? A. Yes. 4928

Q. Where was that? A. That was at Greenwich and Jay Streets.

Q. On the street? A. Yes.

Q. Was there anyone else present? A. There was a fellow from our local down home, a business agent, Joe Mangone.

Q. Was anyone with Dillon? A. I don't think there was. There might have been somewhere around there, but I just don't recall.

Q. Did you have a conversation with him? A. Yes.

Q. What was said? A. Well, we got into an argument over overtime again and he said he had another job in view and if I would give him $100 he would get off the job and let Randazzo take it. 4929

Mr. Boudin: If your Honor please, I move to strike out that part of the conversation as not having to do with charge in the indictment.

The Court: Objection overruled. It is admitted as against Dillon.

Mr. Boudin: Exception.

Q. What did you say? A. Well, I agreed to do it because I didn't think it could be any worse——

Mr. Boudin: I move to strike it out.

The Court: Strike out "I agreed to do it." Just tell us what was said.

The Witness: I told him O.K., I would do it.

Q. Did you pay him any money? A. Yes.

Mr. Boudin: I object to that.

The Court: Overruled.

A. I gave him $100.

Q. In what form? A. A check.

4931 Mr. Ennis: I request this paper to be marked a Government's Exhibit for Identification.

(Marked Government's Exhibit 56 for Identification.)

Q. Mr. Byrnes, I show you Government's Exhibit 56 for Identification. Will you examine it, please. A. Yes, that is it. That is his signature.

Q. Is that the check you gave to Dillon on that occasion? A. Yes.

Q. Is that your signature on it? A. Yes.

Mr. Ennis: I offer it in evidence.

Mr. Boudin: That is objected to it on the ground
4932 that it has not relevancy to any crime charged in the indictment and not binding on any of the defendants.

The Court: Overruled. I will receive it as against Dillon.

(Mr. Murray looks at paper offered by Mr. Ennis.)

Mr. Ennis: I hear no objection, your Honor——

Mr. Boudin: Oh, yes. I objected.

The Court: I heard it and overruled it.

Mr. Ennis: I am sorry.

(Government's Exhibit 56 for Identification received in evidence.)

Mr. Murray: If your Honor please, I would like to ask your Honor to instruct the jury to ignore the remark of the District Attorney that he heard no objection.

The Court: Don't you suppose the jury heard what Mr. Ennis said and what I said?

Mr. Murray: Nevertheless I would like to ask your Honor to instruct the jury to disregard it, and I might say further, your Honor, that I don't like to 4934
be asked as defense counsel whether I have any objection or not to any exhibit.

The Court: You are not supposed to be asked.

Mr. Murray: I have been repeatedly, your Honor.

The Court: Well, the Court feels that the incident is closed by the remark which is made in explaining that the objection had been heard by the Court and overruled, and the document is received and the jury so instructed as against the defendant Dillon only.

Mr. Ennis: This paper dated July 7, 1937, says: "Pay to the order of Robert Dillon $100," signed, "R. A. Byrnes, Inc., by R. A. Byrnes," and on the back one signature is Robert Dillon.

4935

By Mr. Ennis.

Q. After you gave Dillon that check did he work for you again? A. No.

Q. Who was your No. 1 man after that? A. Randazzo.

Q. Do you recall any conversation with Randazzo about his working for you? A. Yes. He said he would dispatch the trucks and he agreed at that time to also give me eight hours' work.

Q. Did you have any talk with him about whether or not he was an employee of yours?

Mr. Boudin: That is objected to as calling for a conclusion.

A. Yes, I did.

The Court: I will sustain the objection.

Q. In addition to what you have stated, did you have any other conversation with Randazzo? A. Yes. After he worked a while——

4937

Mr. Boudin: One moment. The answer to that, if your Honor please, can be yes or no.

The Court: The answer is "Yes. After he worked a while."

The Witness: He brought up the subject of social security.

Mr. Boudin: I object to that.

The Court: No. I will strike that out. You may put another question.

Q. When did you have a further conversation with him?

The Court: He has already told you that after he worked a while.

4938

Q. What was that conversation?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Do you recall such a conversation? A. Our next conversation was on social security.

The Court: How long was that after the time that he became No. 1 man?

The Witness: It was the following spring of 1938.

Q. What was said? A. Well, he demanded me to take out social security and I told him I never hired him.

Mr. Boudin: I object to this witness' further answer except as already stated.

The Court: The question was what was the conversation.

Mr. Boudin: He has stated it was about social security. Now I am objecting to further testimony about that from this witness. 4940

The Court: What was the conversation?

The Witness: I told him I never hired him.

The Court: Objection overruled. Exception to the defendants.

The Witness: I didn't have to take out social security.

Mr. Boudin: Exception.

The Witness: I didn't intend to do it; that I never employed him.

Q. Did you have any conversations with anyone else about that subject? A. Yes. With a man in the office by the name of Brennan. 4941

Q. In what office? A. The union office.

Q. When was that? A. That was along in April, 1938.

Q. What was said in that conversation?

Mr. Boudin: That is objected to on the same grounds.

The Court: Well, who was Brennan?

The Witness: He was a union delegate.

The Court: Do you know that?
The Witness: Yes.
The Court: Proceed.
Mr. Boudin: I press the objection.
The Court: Overruled.
Mr. Boudin: Exception.

Q. What was said? A. He said that I had to take it out, that it was the law, that anybody employed by me, we had to take it out, but I told him I never employed this man, and I had went to the Internal Revenue office about it and they said, "If there is anyone"——

4943

Mr. Boudin: That is objected to.
The Court: Strike out what they said.

Q. You told him you had gone to the Internal Revenue Office about it? A. That is right.

Q. Did you ever take out social security for Randazzo, or any of the rest of those men? A. I never did.

Q. Mr. Byrnes, before you used 807 men, about what time did your trucks leave your place in Swedesboro to make deliveries in New York? A. It would depend on the kind of load, whether it went to Brooklyn or not. Any time after midnight to 2 o'clock; along in there.

Q. Did you deliver most of your loads to any one place or a few places? A. Well, there were quite a few. There
4944 were a number of large ones, R. C. Williams, Leggetts, Bohacks, Seeman Bros., Jaburg Bros.

Q. What merchandise did you deliver to these places? A. Canned goods.

Q. Straight loads? A. No. Sometimes it would be mixed loads.

Q. Before you used 807 men what time did your trucks get back to Swedesboro?

Mr. Boudin: That is objected to as immaterial, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. They would start coming in around noon, 1 o'clock; from then on until the middle of the afternoon. It would depend on the load, how many stops they had. Straight trucks would come in around 1 o'clock I would say; most of them.

Q. What time did they get back after you had 807 men?

The Court: What time did they leave after you began using 807 men? 4946

Q. What time did they leave Swedesboro after you began to use 807 men? A. They would leave about the same.

Q. What time would they get back? A. Sometimes as late as 10 and 11 at night.

Q. Did they generally get back later after you used 807 men? A. Yes.

Mr. Boudin: That is objected to.

The Court: Sustained. Strike out the answer.

Mr. Ennis: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray: 4947

Q. You testified I believe, Mr. Byrnes, did you not, that you had a contract with Local 590 of Vineland? A. Yes.

Q. When did you sign that contract? A. I just don't know the date. I have had several with them.

Q. Well, would it refresh your recollection if you considered the fact that you testified that you had a conversation concerning Local 807 about March 1, 1937? A. I don't remember.

Q. Well, when did you first talk to anyone in Local 807? A. About the middle of March.

Q. Of 1937? A. Yes.

Q. Did you have a contract with Local 590 of Vineland at that time? A. I had had several contracts.

Q. Mr. Byrnes, did you have a contract with Local 590 from March 1 or March 15 of 1937? A. I don't remember the date, but I had a contract with them in 1937.

Q. Did you have a contract with Local 590 at any time in the month of March, 1937? A. I don't know what date I signed the new contract.

4949 The Court: He didn't ask you about the new contract. He asked you about any contract.

The Witness: I had a contract with 590 but I just don't know the date.

The Court: Well, at the time that you were unloading your own trucks in New York and a circumstance arose that the trucks were unloaded by somebody else, did you have a contract at that time with 590?

The Witness: I don't remember the date.

Q. Well, do you remember testifying here on direct examination that you said to members of Local 807 about the 1st of March or in the month of March, 1937, that you didn't see why you had to sign a contract with Local 807 4950 because you did have a contract with 590 of Vineland, New Jersey? A. Yes; because I had several contracts with 590.

Mr. Murray: May the answer be stricken out.

The Court: Strike it out. The stenographer will repeat the question.

Q. (Read.) A. Yes, I remember that, but I don't know what date I signed that contract.

The Court: You were not asked that; you were asked whether when you had this conversation for the first time with members of 807 that you told them that you had a contract with No. 590.

The Witness: Yes, I remember that.

Q. Well, does what you testified on direct examination now refresh your recollection as to whether or not in fact you did have a contract in the month of March, 1937, with Local 590 of Vineland, New Jersey? A. I think I did, because they just overlapped all the time, the contracts.

Q. May I have that contract? A. I haven't it with me.

Q. Do you know where it is? A. In the Swedesboro office. 4952

Mr. Murray: Your Honor, may I have the privilege of postponing this witness' cross-examination until I make an effort to get the contract?

Mr. Cahill: If your Honor please, I submit there are proper ways of doing that.

The Court: That is what he is asking.

Mr. Cahill: I think the proper way under the circumstances is known to counsel.

Mr. Murray: I am not asking his Honor for it. I am asking for a postponement of the examination.

The Court: I think there are features of the examination that you can follow regardless of that particular element of it. It is now nine minutes of one and I suggest you continue your cross examination until one o'clock. We will then deal with that situation. 4953

Q. Do you recall that you testified on direct examination that all of your employees were members of Local 590 of Vineland in the month of March, 1937? A. Yes.

Q. Was that a fact? A. I couldn't remember dates. I think it is a fact.

Q. Well, don't you recollect you told the district attorney that all members or all employees of yours were members of Local 590? A. Yes.

Q. Is that a fact? A. I may have my dates mixed on that, but I think so.

Q. Well, don't you recollect that your attention was particularly called to the time that you first had contacts or conversations with members of Local 807? A. Yes.

Q. And don't you know that you were talking about that particular time when you testified here on direct examination? A. Yes.

Q. Well, I will ask you again whether or not it was a
4955 fact that in March, 1937, all of your drivers were members of 590? A. Yes.

Q. It was a fact, was it? A. I am pretty sure it was. I don't remember all the dates.

Q. But don't you know, Mr. Byrnes, that we are talking about March, 1937? A. Yes.

Q. Now will you be good enough to give me the names of some of your drivers who were employed by you in deliveries to New York in March of 1937? A. Ross Cavello.

Q. Please spell it? C-a-v-e-l-l-o.

Q. Is he a driver still employed by you? A. Yes.

Q. Was he a member of 590 in March of 1937? A. Yes.

Q. Will you give me the name of some other driver that delivered loads to New York at that time? A. Raymond Conover.

4956 Q. Is he still employed by you? A. Yes.

Q. Will you be good enough to give me the names of some other drivers who were employed on deliveries to New York? A. Allan Vane.

Q. Is he still employed by you? A. Yes. Walter Simpson.

Q. Is there anybody else that you can recollect at this time? A. Harry Duffield. Harry Turner. John Wright. James Hansley. There are several others that are not with us. Is that enough?

Q. Yes. Now do you know who the president of Local 590 of Vineland was in March, 1937? A. Pat Trotter.

Q. Do you know whether or not there was a delegate connected with that union at that time? A. A delegate?

Q. Yes. A. There were two fellows in there. Edward Durr as secretary, and Joe Mangone, supposed to be business agent.

Q. Well now, do you know when Dillon was first employed on your trucks here in New York? A. It was about the middle of March when they first started to stop them.

Q. And when did you sign the contract with the union? A. May 19th.

Q. Now, between May 19th and July 1, of 1937 was there 4958
any talk between you and Dillon as to the compensation that employees should get? A. I can't recall any now.

Q. Well, up to the middle of 1937 did you meet Dillon and have any talk with him concerning the wages that the New York Local claimed they were entitled to? A. I met him on a couple of occasions but it was mostly overtime that we talked about.

Q. Well, can you, or are you able to fix the first time that you met him and talked about overtime? A. The first time was May 19th, I think. I think there is one day ahead of that. I am not positive of the date.

Q. You mean May 19th of 1937? A. That is right.

Q. When was it that Dillon told you that if you would pay him a certain amount he would quit? A. That was July 7th in 1937. 4959

Q. Was that 1937? A. Yes.

Q. Well, between May of 1937 and July of 1937 did you meet Dillon on occasions in which there was discussed between you and him what he urged were claims of Local 807 for wages due? A. Yes, there was.

Q. Now, after May of 1937 how often did you meet him up to July 7 of 1937 where that matter was discussed between you? A. I couldn't say how many times. There wasn't very many.

Q. Did you come to New York on occasions to discuss it with him? A. I think I was here twice if I remember right.

The Court: Well, we will suspend here until ten minutes after two, and I will take this matter up as soon as the jury has retired.

(The jury left the courtroom.)

(The following proceedings were had in chambers):

The Court: Now whether Mr. Murray knew that this man was to be a witness or not, I don't know that it could have been reasonably foreseen that the
4961 question would arise as to whether at the time he had a conversation with certain members of Local 807 that it would put in issue the question whether he had at that same time a contract with 590 or not, and whether he had a contract with 590 may not be germane so far as the terms of the contract are concerned, but it may be important on the question of veracity. Therefore I think that the defendants are entitled to an opportunity to produce the papers because I assume there is more than one contract from his testimony. Now the question is whether he will prefer to bring these papers in here himself without any subpoena and arrange it at his convenience or whether the examination should be suspended and an opportunity given to serve him with
4962 a subpoena duces tecum.

Mr. Cahill: It seems to me, Judge, what he was trying to say was he couldn't recall a particular contract but he had several similar contracts.

The Court: That is all right. He probably had contracts, one overlapping the other.

Mr. Cahill: Why not get him in here and ask him?

The Court: Yes, get him in.

Mr. Murray: May I make an observation, if your Honor please?

The Court: Yes.

Mr. Murray: My notes show, and I think they are virtually correct, that the witness testified that when he held the first conversation with representatives of Local 807 in March of 1937, and I thought he said March 1, he said to the representatives of Local 807 that he had a contract with 590 in Vineland, New Jersey, and therefore he was not obligated to employ union men in New York. That is my recollection; and he said further that that contract was good all over the United States. 4964

The Court: I don't remember that.

Mr. Murray: Yes, he did.

The Court: Well, we don't have to go into that. The point involved here is this: I don't assume that the gentleman had any more idea that he would be interrogated about his contract with 590 than you, claiming surprise that you are not prepared to go on with your examination, because I don't know what particular contract, if any, he had at the time that he came into New York of March, 1937. Now the matter before me, Mr. Byrnes, is whether you want to have an opportunity to examine your records and bring the records up with you or whether you want to stand on your right that the other side must serve you with a subpoena duces tecum. 4965

Mr. Byrnes: I would like to check the records, Judge, because it is hard to remember all these dates. I have had several contracts.

The Court: You are not answering my question. My question is whether you want an opportunity to bring these records up here about this contract or whether you want the defendants to serve you with a subpoena to produce them.

Mr. Byrnes: No. I would like to get the records.

The Court: When would it be convenient for you to do that? How much time do you need to look up your records?

Mr. Byrnes: It won't take so long.

The Court: When would you prefer to come back?

Mr. Byrnes: Say about Wednesday?

The Court: We will only have a half-day on Wednesday, in the morning.

Mr. Cahill: I was just saying to Mr. Ennis if the gentleman has somebody in his office that he could telephone to and he could rely on that person, that
4967 might expedite it.

Mr. Murray: Well, I want the contract.

The Court: I think the defendants are entitled to subpoena them if they want them.

Mr. Cahill: Oh yes. If they want them.

The Court: Is it agreeable, Mr. Cahill, to have him come back Wednesday? I don't know what witnesses you have in contemplation and whom you have under subpoena.

Mr. Cahill: As I indicated to your Honor, we are in this position at the moment: We are having to pick up Mr. Marks's work because he is ill. That left us in the air.

The Court: Would you prefer to have it Wednesday morning?

4968 Mr. Cahill: Yes, if that is convenient to Mr. Byrnes.

Mr. Byrnes: Yes.

The Court: Is that agreeable to you, Mr. Byrnes?

Mr. Byrnes: Yes.

The Court: Is that agreeable to defendants' counsel?

Mr. Murray: Yes, your Honor, but perhaps it would be better if I stated what I would like to have.

The Court: Yes.

Mr. Murray: I would like to have any contracts that were in existence in March or during the remainder of the year 1937 and also the prior contracts that he had before March of 1937.

The Court: All right.

Mr. Cahill: I would like to say for the record that I would like to have all copies of all contracts that you had with Local 590 at any time.

The Court: All right.

Mr. Murray: May I ask, although I did not inquire about it in cross-examination—may I ask Mr. Byrnes a question to clarify the situation? 4970

The Court: Yes.

Mr. Murray: Mr. Byrnes, was your concern in the habit of paying the dues of the members of that union?

Mr. Cahill: I object to that as immaterial.

The Court: Mr. Murray is asking the question for the purpose of finding out whether there is some record he would want to subpoena.

Mr. Boudin: That is correct.

Mr. Cahill: Well, I wish to preserve my objection.

The Court: All right. The question is not being put as evidence before the jury. It is being put in an inquiry by me for the purpose of ascertaining what method shall be taken to secure the presence here of documents which the defendants claim they might want to subpoena in order to properly conduct the cross-examination. 4971

Mr. Byrnes: When we first signed up with them——

The Court: With whom?

Mr. Byrnes: 590. They collected the dues themselves. Then later on—I couldn't tell you the

dates exactly—I can get them for you—we started to pay them for them by taking out so much.

The Court: And sending a check in?

Mr. Byrnes: Yes. A union man would stop and pick up the checks because most times when the man came around, the man was on the road somewhere. I would pay the dues for both of us.

The Court: Does that answer the question?

Mr. Murray: Yes. If he will bring his records as to whether or not the company was paying dues in behalf of the men in March, April and May of 1937.

4973 The Court: Is that clear to you, Mr. Byrnes?

Mr. Byrnes: Yes.

The Court: Is there anything else you apprehend the necessity for in the cross-examination of the witness besides what you now specify?

Mr. Murray: No.

The Court: The only things that are required then are any contracts that you have heretofore entered into with 590 and any records you have showing payment made by your company to the account of your drivers in 590 through checks or cash that were turned over to 590 or picked up by the agent of 590 during the months of March, April and May of 1937.

Mr. Byrnes: Thank you.

4974 Mr. Cahill: Are we going to have the cross-examination, Judge, except for that?

The Court: Well, I don't know. It seems to me you might as well suspend cross-examination until Wednesday morning, and let him go on Wednesday morning as the first witness and we will finish up this examination and let him go home. Have you anything else you want to do here today?

Mr. Byrnes: No.

The Court: In New York? Do you want to stay here and go as far as you can with your examination or do you want to go back to your home now and finish up Wednesday morning?

Mr. Byrnes: Yes. I would sooner get the contracts and come back Wednesday.

Mr. Murray: All right. May I ask if I could have those contracts by 10 o'clock Wednesday morning to give me a half hour to look at them?

The Court: Is it agreeable to you to let Mr. Murray look at the contracts and the other records before you go on the witness stand? 4976

Mr. Byrnes: Yes.

The Court: All right. Ten o'clock right here Wednesday morning.

(Recess to 2.10 P. M.)

AFTERNOON SESSION—2.10 P. M.

The Court: The examination of the witness who was on the stand at the recess has been suspended until Wednesday morning. We will now have the next witness.

FRANK LOBIONDO, residing at R.F.D. 6, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows: 4977

Direct examination by Mr. Ennis.

Q. What is your business, Mr. LoBiondo? A. Trucking.

Q. Were you engaged in that business in 1937? A. Yes.

Q. What was the name of your trucking company? A. LoBiondo Bros. Motor Express, Inc.

Q. What is your position in the company? A. Manager.

Q. Did you in 1937 truck merchandise from your place of business in New Jersey to New York City? A. We did.

Q. What kind of merchandise? A. Well, principally canned goods along with other products.

Q. About how many trucks a day did you send into New York City? A. Oh, anywheres from one to four.

Q. At the beginning of 1937 who unloaded your trucks in New York City? A. Our own drivers unloaded them.

Q. Did a time come when other persons unloaded them?

4979 A. Yes.

Q. When? A. Oh, I would say the early part of May, the latter part of April; along there some time.

Q. Did you come to New York City about that time? A. No, I did not.

Q. And did you at any time come to New York City on this matter of unloading your trucks? A. Yes, I did.

Q. When? A. About the middle or the latter part of May.

Q. Whom did you see on that occasion? A. I saw one of the men that unloaded our trucks at that time.

Q. Who was he? A. You want the name?

Q. Yes. A. Eddie Stimus.

Q. Where did you go with him? A. We went to a place on Varick Street, I believe, supposed to be union

4980 headquarters.

Q. Whom did you see there? A. When we got there, we waited about a half hour——

The Court: No; whom did you see?

The Witness: Mr. Willie Campbell.

Q. Did you have a conversation with Willie Campbell? A. Yes.

Q. Did you see him subsequent to that occasion? A. I do not believe I had.

Q. Will you stand and look around this room and tell us if you see that person Willie Campbell? A. (Standing) I believe he is right over there (indicating).

Q. What row? A. Second row.

Q. Which seat? A. Second seat, second row, over this way (indicating).

Mr. Ennis: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

(A man stood.) 4982

Q. Is that the man you saw at union headquarters? A. Yes.

Q. You may be seated. A. All right (sitting down).

Q. Did you have a conversation on that occasion? A. Yes.

Q. What was said? A. He asked me if I was ready to sign a contract.

Q. What did you say? A. I said, "Do we have to sign a contract?" He said, "If you want to deliver stuff in New York with your trucks you will have to sign a contract. If you don't want to come into New York with your trucks, you can do as you please."

Q. Did you have any trucks in New York on that day? A. Yes. 4983

Q. How many? A. Four. About four. Yes, that is right, four.

Q. Was that more than you usually had in on any one day? A. Yes.

Q. What did you say to that? A. I said, "Why do we have to sign a contract?" I said, "Can't we pay these men when they unload the trucks if we have to without signing a contract?"

Q. Yes? A. And he said, "Well, if you want to come into New York you have to sign a contract, that is all."

Q. Well, was anything said about what men would work on your trucks? A. Yes.

Q. What was said? A. Well, he said that we would have to have 807 men to unload the merchandise, unload the trucks; men from that local.

Q. Well, were the men named, or anything said about what men they would be? A. Well, yes, Eddie Stimus was supposed to be one of the men.

Q. Was there anything said about additional men? A. Yes.

4985 Q. What was said? A. Said that if we needed additional men that they would be picked by this Eddie Stimus.

Q. Did you say anything about that? A. Well, I said I didn't think we needed any additional men; I thought one man would be sufficient if we had to have anybody at all. So I wanted to know how much one man would do for the amount they wanted. He said, "Well, one man will unload one or two trucks. If you have got three trucks, then you have got to put a second man on."

Q. What did you say about that? A. I said, "Is that necessary? Do we have to do that?" I said, "Our trucks can get unloaded if we have a straight load, in one hour; two trucks can easily be unloaded in a half a day." I said, "Why can't one man unload more than two trucks?"

4986 He said that two trucks were considered a day's work for an 807 man.

Q. Before that conversation in union hall and the meeting on that day with Stimus, had you ever talked to him? A. Yes; on the telephone.

Q. Well, can your now say that the voice you heard on the telephone was his? A. Yes.

Q. When did you first talk to him on the telephone? A. One day before I came up to sign a contract.

Q. Did you have trucks in New York on that day? A. Yes.

Q. What was the conversation with Stimus?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

Q. What was the conversation? A. We had some trucks up in New York that morning, and they were being held up; that is, they could not unload——

The Court: Strike that out, unless that is what you said. 4988

By the Court.

Q. Are you telling us now about your trucks from some other source, or is that what you said in the conversation with Stimus? A. Well, Stimus called me on the telephone.

Q. What did he say? A. He said, "If you want to get your trucks unloaded you have got to come up here and sign a contract."

By Mr. Ennis.

Q. What did you say? A. I said, "Get those trucks unloaded and send them back. We need the trucks; and I will be up there tomorrow to see about that." 4989

Q. Did you pay for the unloading of those trucks? A. Yes.

Q. How much did you pay? A. $9.42.

Q. How much did you pay 807 men for unloading your trucks between May of 1937 and May of 1938? A. We paid them over $2,000.

Q. Now, before you used 807 men on your trucks, what time would your trucks leave Bridegton to come to New York? A. Well, they usually leave around 1 or 2 o'clock in the morning to come to New York.

Q. And did they leave about the same time when you used 807 men? A. Yes.

Q. Now, when did your trucks arrive home before you used 807 men? A. Around 1 or 2 o'clock; sometimes 3 o'clock in the afternoon.

Q. When did they arrive home when you used 807 men? A. 4 o'clock seems to be the earliest that they can get back—that they get back; sometimes later.

4991 Q. Before you used 807 men were your drivers members of any union? A. Yes.

Q. What union? A. Local 590 of Vineland.

Mr. Ennis: I request that this paper be marked as a Government's exhibit for identification.

The Court: All right.

(Marked Government's Exhibit 57 for Identification.)

Q. Mr. LoBiondo, I show you Government's Exhibit 57 for Identification. Have you seen that paper before? A. Yes, I have.

Q. Does it bear your signature? A. It does.

4992 Q. Where did you sign that paper? A. At the Local 807 office.

Q. At the time of the conversation you have testified about? A. Yes.

Q. Did you see anyone else sign it at that time? A. I don't remember seeing anyone else sign it at that time.

Q. Did you take that paper or a copy of it away with you when you left at that time? A. I took a blank copy with me to read over.

Mr. Ennis: I offer it in evidence (handing to Mr. Murray).

The Court: What is the date?

Mr. Ennis: May 22, 1937.

(Government's Exhibit 57 for Identification received in evidence and read to the jury.)

Q. Mr. LoBiondo, how did you pay these Local 807 men who worked for you? A. You mean how?

Q. The method of payment. Did you pay them by cash or by check? A. I believe we paid them by check.

Q. Every day or by the week? A. In the beginning we paid them every day. 4994

Q. After you signed this paper how did you pay them? A. We paid them once a week after that.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. Mr. LoBiondo, will you look over here at your right at these men sitting inside the rail and tell me whether or not you see Stimus there? A. I don't believe I do. I don't believe I do.

Q. When did you last see Stimus? A. When did I last see Stimus?

Q. Yes. A. Today.

Q. How long has Stimus been employed by you? A. 4995
Since May of 1937.

Q. About what tonnage were the loads that your trucks on an average carted from New Jersey? A. Oh, they varied; some of them ten ton.

Q. Some twenty? A. I don't think so, no.

Q. Eighteen ton? A. About seventeen is the most that I believe——

Q. Beg pardon? A. Seventeen ton sometimes.

4996 Q. Are you a member of the South Jersey Truckmen, Inc.? A. No, we are not.

Mr. Murray: That is all.
Mr. Ennis: No redirect.
The Court: Excused.
(Witness excused.)
The Court: Next witness.
Mr. Ennis: I will call George Henry Harbert.

4997 GEORGE HENRY HARBERT, residing at 107 York Street, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Harbert, where were you employed in the beginning of 1937? A. LoBiondo Bros.

Q. In what capacity? A. Truck driver.

Q. Were you at that time a member of any union? A. Local 590 of Vineland, New Jersey.

Q. At the beginning of 1937 did you drive trucks into New York City? A. We did, yes, sir.

Q. At that time who unloaded your trucks? A. We did.

4998 Q. Whom do you mean by "we"? A. Driver and helper.

Q. You— A. Carried our own helpers.

Q. What kind of goods did you truck in? A. Canned goods.

Q. Where to, principally? A. All over New York City, wholesale grocery stores.

Q. Will you mention a few of them? A. Seeman Bros., Gristede's, Austin, Nichols, A. & P. Warehouse, American Stores Warehouses.

Q. Did you usually drive straight loads for one consignee, or mixed loads for several consignees? A. Most always straight loads.

Q. On the average how long would it take you to unload your truck? A. The longest would be two hours; not over two hours.

Q. Did you usually take return loads or go back light? A. Mostly went back light.

Q. What time would you leave home to drive to New York City? A. 12 o'clock at night; 12 at night or 1 o'clock in the morning.

Q. What time would you get home, get back? A. You mean before the union up here bothered us? 5000

Q. Yes. A. 2 or 3 o'clock in the afternoon.

Mr. Maguire: I move to strike out that statement with respect to before the union did something.

The Court: Let me hear it.

(Answer read.)

The Court: Strike that out. The jury will disregard it.

Q. What time would you get home before anyone else unloaded your truck? A. 2 or 3 o'clock in the afternoon.

Q. Did a time come when other persons and yourself unloaded the truck? A. Yes, sir.

Q. When did that begin? A. 1937. 5001

Q. Do you remember the time of the year? A. Around March; around the 1st of March.

Q. Do you recall the first occasion? A. The first time that I was——

The Court: The first time that somebody unloaded your truck besides your helper and yourself.

The Witness: It was at Seeman Bros., 121 Hudson Street.

Q. What was your load at that time? A. Canned goods.

Q. Did you have any conversation there at Seeman Bros. about unloading your truck? A. Yes, sir.

Q. Do you know the persons with whom you had that conversation? A. I do now.

Q. Do you know their names? A. Yes, sir.

Q. What are they? A. Reds Klein and Barney Randazzo.

Q. Anyone with them? A. There was a colored fellow
5003 with them, but I don't know what his name was.

Q. Will you stand and look around the court room and tell the Court and jury if you see either of those persons here? A. There is Barney over there with the lead pencil in his hand writing (indicating).

Mr. Ennis: May the clerk call the name of Bernard Randazzo?

The Court: Yes.

The Clerk: Bernard Randazzo.

(A man stood.)

Q. Is that the man, who rose? A. Yes, sir. There is the other fellow over there, hiding back of the other man with a zipper on the front of his shirt (indicating).

Q. Where is he? A. In the second row.

5004 Q. What row is he from the— A. Sixth man on the second row.

The Court: Well, where is the second row? Inside or outside of the rail?

The Witness: Back of the rail.

Mr. Ennis: May I request that person to stand?

The Court: Well, you may ask him if he will.

Mr. Ennis: Will you stand, please?

(A man stood.)

By the Court.

Q. Is that the man you refer to? A. I believe it is, yes, sir.

Q. Well, did you ever learn his name? A. No, that is not him.

Q. That is not the man? A. No.

By Mr. Ennis.

Q. That is not the man? A. Oh, no.

Q. Well, will you look around further and see if you see that man here? You may stand down and walk around, if you wish. You can step down from the witness stand if 5006
you can't see from there. A. (Stepping down from stand) I can't see him now; I can't find him.

Mr. Murray: Your Honor, might I ask the man that this witness pointed to in the audience to stand up and give his name?

The Court: You may ask him.

Mr. Murray: Will you stand up, mister?

(A man stood.)

Mr. Murray: Have you any objection to giving your name?

Mr. Walter: Jack Walter.

Mr. Murray: And your address?

Mr. Walter: 287 Ocean Avenue, Brooklyn.

5007

Q. Mr. Harbert, I show you Government's Exhibit 54 for Identification. Will you look at the face of that, please? A. Yes, sir; that is the gentleman.

Q. Is that the person you spoke to on that occasion? A. Yes, sir.

Q. Well, would you mind standing up again and look around the court room and see if you see that person here? A. (Standing) Yes; he is hiding back in the corner.

Q. Will you point out the man?

The Court: Point out the man. What row is he in?

The Witness: Second row.

The Court: How far from——

The Witness: Slouched down in his seat there, third man from this end, second row.

The Court: And how is he dressed? What color clothing?

The Witness: He has got a slip sweater on, I believe, it looks to me, from the corner; I can't say: he is down below. Not the one with his hands resting on the back of the chair, the one next to him, behind him.

5009

Mr. Ennis: May the clerk call the name of Abraham Klenofsky?

The Court: Yes.

The Clerk: Abraham Klenofsky.

(A man stood.)

Q. Is that the man? A. That is him, that is the gentleman.

Q. That is the man you saw with Randazzo on that occasion? A. Yes.

Mr. Murray: May I ask that it be stricken from the record, the volunteered statement of the witness?

5010

The Court: Strike it out, that he was hiding.

Q. What was the conversation? A. I was unloading my truck at Seeman's; I was about half unloaded when these men came up; they told me that I could not unload the truck; I had to have an 807 man to unload it for me.

Q. What did you say? A. I said I had no authority to hire anybody to unload the truck. I said it was past my

jurisdiction. I went across the street to our main office, our office in New York, 126 Hudson Street, and I talked to the man there; then I came across the street and I went to Seeman's office and spoke to a man there by the name of John, the receiving clerk, and when I came out these men were gone, and I finished unloading my truck.

Q. When did you next have any conversation in New York City about unloading your truck? A. The next conversation I had was at 23rd Street.

Q. About how long was that after the occasion at Seeman Bros.? A. I would say about a week.

Q. What did you have to deliver at 23rd Street? A. Two packages. 5012

Q. How big were they? A. Well, the two packages weighed sixty pounds.

Q. A total of sixty pounds? A. Yes.

Q. Do you remember the place to which you were delivering on 23rd Street? A. They were labels, but I can't remember the name of the party it was to be delivered to.

Q. What were in the packages? A. Labels, from Price Label Company in Bridgeton.

The Court: Did you say "labels"?

The Witness: Yes, labels; to stick them on the bottles.

Q. Did you have a conversation with anyone there? A. Yes, sir. 5013

Q. Do you know with whom you had that conversation? A. I know now; I didn't know then what his name was.

Q. What is his name? A. George Needelmann.

Q. Will you stand and tell the jury if you see that person here. A. This man right here looks like him sitting in front on the bench. The first man next to the wall.

Q. I don't know which man you mean. A. Sitting on the bench facing this way. The first man there next to the wall. There are three men on the side there (indicating).

Q. The man in the corner? A. Yes.

Q. You say it looks like him. Is that the man or isn't it? A. I believe it is, yes, sir.

Q. You believe it is? A. Yes, sir.

Mr. Murray: May I have him stand, if your Honor please?

The Court: Yes.

(A man stood up.)

Mr. Murray: May I have his name entered on the record?

The Court: You may state his name.

Mr. Murray: Robert Dillon.

5015 Mr. Ennis: I request this to be marked a Government's exhibit for identification.

(Marked Government's Exhibit 58 for Identification.)

Q. I show you Government's Exhibit 58 for Identification. Will you look at that, please. A. That is the man, yes, sir.

Q. That is the man? A. Yes, sir.

Q. You saw on 23rd Street? A. Yes, sir.

Q. Well, would you look around again, please, and tell us if you see that man here. A. (Standing).

Q. You may step down and look around if you wish. A. (Witness leaves stand and walks around court room.)

5016 Q. Will you take your seat again, please. A. (Witness returns to stand.)

Q. Was that the first time you saw that person? A. Yes, sir.

Q. Did you ever see him again? A. I have saw him around the corner of Beach Street and Hudson Street with a gang of these fellows that hang around there.

Q. Did you ever see him in the presence of anyone you know? A. Why, he has been—I have saw him with Bernie Randazzo. I saw him with a bunch of boys he hangs out with.

Q. Where did you see him with Randazzo? A. Around the corner of Beach and North Moore Street, that restaurant there where they hang out—Beach and Hudson Street, I meant to say.

Q. Going back to this occasion on 23rd Street: Did you have a conversation with him at that time? A. I did.

Q. What was that conversation?

Mr. Boudin: That is objected to.

The Court: I will allow it.

Mr. Boudin: Exception.

A. I had two packages to deliver to this place on 23rd Street. So I didn't want—— 5018

Mr. Maguire: I move to strike this out.

The Court: Strike it out.

You were asked what the conversation was. Now what did he say and what did you say?

The Witness: He asked me what delivery I was to make. I told him I had two packages to deliver on the 4th floor. He said that I would have to pay him $2 to take those two packages up to the 4th floor. He said I couldn't deliver them myself, and that I had to have an 807 man to deliver them for me. I told him before I would pay $2 I would take them home because they wasn't worth that much. So he said I couldn't take my truck away from there, 5019 that I would have to make the delivery. I went down to the corner. There was an officer standing there and I told him——

Mr. Maguire: I object to what he told the officer.

The Court: No. You had a conversation with the officer?

The Witness: Yes.

The Court: What did you do after that?

The Witness: The officer came down.

Mr. Maguire: I move to strike it out.

The Court: All right.

The Witness: The officer came down to my truck and told him to scram, and I got on the truck and came home, or came back to our New York office.

Q. Did you deliver those two packages? A. No, sir. I took them to 126 Hudson Street, our office.

Q. Were you alone on the truck that day? A. Yes, sir.

Q. At what time subsequent to that did you have a conversation in New York City about unloading your truck? A. You mean before or after?

5021 Q. After that A. After that?

Q. Yes. A. After that I had a conversation with a man that now works our trucks in New York.

Q. What is his name? A. Eddie Stimus.

Q. When did you have that conversation? A. The latter part of March, 1937.

Q. Where did you have that? A. At Gristede Bros., 128th and Park Avenue, New York.

Q. Had you unloaded your truck at the time the conversation began? A. Partly.

Q. What was the conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

5022 Mr. Maguire: Exception.

A. We were unloading the truck and he came up to the back end of the truck and asked me what the hell I was doing up there without him.

Q. What time of the day was that? A. Between 7.30 and a quarter to 8 in the morning.

Q. Had you delivered merchandise to Gristede Bros. before the 807 men went on your trucks? A. Yes, sir. Plenty of times.

Q. What time of the morning did you make such deliveries? A. We got there at 6 o'clock. We could start unloading any time between 6 and 6.30 when the receiving clerk got there.

Q. Now, what was your conversation with Stimus on this occasion? A. Well, he asked me what the hell I was doing up there without him; he was supposed to be on our trucks when they came in New York City; I had no business up there unloading the truck unless he was on it, and I told him that was my orders, to bring the load up there and unload it. That was what my boss told me to do. He said that I couldn't unload the truck, for me to stop unloading the truck and he would get in touch 5024
with his steward or his superior, which was Willie Campbell.

Mr. Maguire: I move that that be stricken out.

The Court: Is that what he said?

The Witness: Yes, sir, that is what he said.

The Court: Or is that your opinion?

The Witness: No. That is what he told me.

The Court: Denied.

The Witness: That he was going to get in touch with Willie Campbell.

Q. Then what happened? A. He called—he went across the street to a telephone and I went with him. He told me to go with him while he got in touch with Willie Campbell. He goes across the street and calls his union office. 5025

Mr. Maguire: I move that it be stricken out.

The Court: Well, he went across the street and used the telephone?

The Witness: Used a telephone.

The Court: Were you there when he was talking over the telephone?

The Witness: Yes, sir. And Willie Campbell wasn't in the office and he couldn't get him.

The Court: How do you know?

The Witness: That is what he told me.

Q. Then what happened? A. He said there was nothing he could do, unless he could get in touch with Willie Campbell. So I unloaded the load and went home.

Q. Had he ever been with you when you unloaded at Gristede Bros. before that? A. Not with me he hadn't, no, sir.

Q. Did you ever see him unloading one of your employer's trucks at Gristede Bros. before that? A. No, I never saw him unload one there.

5027 Q. Do you recall any subsequent occasions upon which you talked about unloading your trucks in New York City? A. I don't understand your question.

The Court: Well, was there any other occasion when you had some discussion with somebody about unloading?

The Witness: I didn't have no discussion with anybody.

The Court: Well, did you have any talk with anybody?

The Witness: No, sir, not that I remember.

Q. Well, do you recall a subsequent occasion upon which you saw anything? A. I saw an incident one morning

5028 when I was backing into Seeman Bros. when I was unloading my truck.

Mr. Maguire: I object to any further statement.

The Court: Yes. The answer should have been yes.

Q. When was that? When? A. Around the latter part of August, I should say, 1937.

Q. What load did you have for Seeman Bros. that day? A. A load of canned goods; tomato juice.

Q. Did you unload it yourself? A. No, sir. I had Eddie Stimus with me, the man that works with our trucks.

Q. Where was Stimus standing? A. He was in the front of the trailer unloading.

Q. Inside? A. Yes, sir.

Q. And where were you standing? A. I was standing almost—well, right around the tail end of the truck; the tail end of the trailer.

Q. What did you see while you stood there?

Mr. Maguire: I object to that.

The Court: Sustained. 5030

Was there anybody else there?

The Witness: In my truck you mean?

The Court: Anywhere.

The Witness: At the tail end of my truck there were two 807 men—two men there.

Mr. Maguire: I move to strike it out.

The Court: Strike out "807."

There were two men there?

The Witness: There were two men there. When I saw them they were pulling a fellow from Seaford, Delaware, from off the truck.

Mr. Maguire: I move to strike it out.

The Court: Strike it out. Strike out except "there were two men." That stands. 5031

Was there anything else there besides men?

The Witness: There was another truck backed in alongside of me. This truck was from Seaford, Delaware, with a load of canned corn on it.

By the Court.

Q. Did you know either one of these men? A. No, sir.

Q. Did you have any conversation with Stimus? A. Yes, sir.

Q. Did you have any talk with them? A. Not at that present time. Not right at that time, no, sir.

Q. Did you ever see these men after that? A. I don't believe I ever have.

Q. Would you know them if you saw them now? A. I don't believe so, no, sir. I wasn't that much interested in them.

By Mr. Ennis.

Q. Did these men show you anything? A. No, sir. I saw one button on one of their hats.

5033

Mr. Maguire: I move to strike it out.

The Court: Strike out after "No, sir."

Q. Did you see anything on their clothing? A. I saw a button on a man's hat.

Mr. Maguire: I move to strike it out.

The Court: Strike out the answer. The answer is yes or no.

The Witness: Yes, sir.

The Court: Put your next question.

Q. What did you see?

5034

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. I saw an 807 button on a man's hat standing next to my truck.

Q. Was that man one of the two men you have mentioned? A. Yes, sir.

Q. What did you see this man doing?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

A. I saw this man pull the owner-driver off of his truck because they were going to unload his truck and he would have to pay them for it. One man did——

Mr. Maguire: May I move to strike it out?
The Court: Strike it out as not responsive. The jury will disregard it.

5036

Q. Who unloaded that truck? A. One of these men.

The Court: Did you see him do it?
The Witness: Yes, sir.
The Court: Which one was it?
The Witness: The one that was standing away from me; not the one next to my tail gate.
The Court: Which one was it with respect to the button?
The Witness: Well, the man that unloaded the truck, I didn't see whether he had on a button or not. It was the other fellow.
Mr. Maguire: Now may I move that the whole alleged incident be stricken out.
5037
The Court: Denied.
Mr. Maguire: Exception.

Q. Did you see a man whom you called the owner of the truck?

The Court: He didn't say owner.
The Witness: I said owner-driver.
The Court: He said owner-driver.

Q. Whom you called the owner-driver of the truck: Did you see him give anybody anything? A. Yes, sir. I saw him give this man——

Mr. Maguire: I move to strike it out.
The Court: Strike out after "Yes, sir."
The Witness: Yes, sir.

Q. Did you see him give anything to the man who unloaded his truck? A. Yes, sir.
Q. What did you see him give him? A. Bills.

Mr. Maguire: I object.
5039 The Court: Overruled.
Mr. Maguire: Exception.

Q. Bills? A. Yes.
Q. Money? A. Yes, sir.
Q. Did you see how many bills he gave him? A. Well, I couldn't count them from where I was standing.

The Court: Had you ever seen bills of that type or character before?
The Witness: Yes.
Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

5040 Q. What was the name of this owner-driver that you testified to? A. I don't know, sir.
Q. Had you ever seen him before? A. Yes, sir.
Q. How often? A. Well, on the average of once a week he would be into Seeman Bros. with a load the same time I would.
Q. Did you see any lettering on his truck A. Not that I took notice of. I saw his name on it but I don't remember what it was.

Q. Was there anything else on the truck besides his name? A. The name and address, yes, sir.

Q. What was the address? A. Well, he told us——

Q. Never mind what he told you.

The Court: What was the address on the truck?

The Witness: Seaford, Delaware.

Q. What was it? A. Seaford, Delaware.

Q. Did you have any talk with that man the morning of this incident you have described? A. Before eight o'clock in the morning, yes, sir.

Q. Did you have any talk with him afterwards? A. Yes, sir. 5042

Q. Had you ever seen those two men before? A. No, sir.

Q. Before they accosted him? A. No, sir.

Q. Did you ever see them afterward? A. Not that I remember, no, sir.

Q. Did you ever see them in the company of Stimus? A. No, sir.

Q. Now have you talked with anyone representing the Government concerning this case recently? A. Certainly. Yes, sir.

Q. When? A. Well, it was Friday, I believe.

Q. When was the last time? A. Friday.

Q. Before that when did you talk to anyone representing the Government? A. I guess it was a couple of months ago, if I remember right. I can't just exactly remember the time now. 5043

Q. Were you shown any pictures Friday? A. Yes, sir.

Q. Where were you when you saw the pictures? A. A room upstairs. Room 415 I believe it was.

Q. Who showed you the pictures? A. Mr. Kennedy, I believe his name was.

Q. The gentleman who sits here (indicating)? A. Yes, sir.

Mr. Murray: Now may I ask Mr. Walters to stand up, please.

(A man stood up.)

Mr. Murray: Will you stand up, Mr. Klein.

(A man stood up.)

Q. Were you shown a picture of Mr. Walters? A. I think there was one in there, yes, sir.

The Court: Of Mr. Walters?

Q. The man that stands up here in the audience (indicating)? A. No, I don't believe I was.

5045 Q. You recollect a few minutes ago you pointed out Mr. Walters as one of the union men you had a conversation with? A. Yes, sir, I did.

Q. Is that right? A. I did.

Q. Were you correct in your identification of that man? A. No, sir.

Q. Then you realize that subsequently you pointed out one of the defendants commonly known as Red Klein as the man? A. Yes, sir.

Q. Are you sure now which was the man? A. Yes, sir.

Q. When did you make up your mind as to which was the man you had the conversation with? A. When I picked him out over there I knew that was the man when I saw him.

5046 Q. When you picked out Mr. Walters in the audience and subsequently looked at Mr. Klein were you of the opinion that they looked alike? A. No, sir.

Q. Were you of the opinion after you viewed both of them that they are totally different in appearance? A. Yes, sir.

Q. And was it after the district attorney handed you a picture of Red Klein that you determined that he was the man? A. No. I didn't determine it after I was showed the picture. I recognized him.

Q. Well, when you saw the picture didn't you say that was the man? A. Yes. I recognized the man.

Q. And were you influenced in your identification by reason of the fact that you had been shown Red Klein's picture last Friday? A. No, sir.

Q. Well, were you shown a picture of the man that you call Needelmann? A. Yes, sir.

Q. Last Friday? A. Yes, sir.

Q. Who showed you that picture? A. Mr. Kennedy.

Q. Were you asked if you could identify a picture of Needelmann? A. He showed me a picture and asked me if that was the man who stopped me, the same as he did today.

5048

Q. Is this what happened: Mr. Kennedy handed you a picture of Needelmann and asked you if that was the man who stopped you? A. He asked me if I could identify the man who stopped me through these pictures. He showed me more than one picture at the time.

Q. Did he particularly hand you Needelmann's picture? A. No, sir.

Q. How many pictures did he show you? A. Oh, I would say 15 offhanded; at least 15.

Q. Was there any one name mentioned when Mr. Kennedy showed you the pictures? A. He asked me if I could identify the man who stopped me. He didn't mention any name.

Q. Did he mention the name of anyone that the picture was supposed to have represented? A. No, sir. 5049

Q. When did you join 590 local? A. September, 1936.

Q. Do you still belong to it? A. Yes, sir.

Q. Now, have you worked with Stimus at any time between March 1 of 1937 and June 1 of 1938? A. Yes, sir.

Q. Will you look around here and see if Stimus is among these defendants. A. No, sir, he is not here.

Q. When did you last see Stimus? A. At dinner time on our truck.

The Court: What day?

The Witness: Today. He was out to dinner.

Q. Did you go to dinner with him? A. No, sir. I went out to dinner myself.

Q. Did you meet him while you were at dinner? A. He was on the truck going to Brooklyn and I saw him when I was on the street.

Q. Now, when was it that you had the conversation that you testified to at Seeman Bros.? A. You mean the first
5051 conversation?

Q. Yes. A. Around the latter part of April or the first part of March, 1937.

Q. You know that is a leeway of two months, don't you? The latter part of May and the first of March. You know that, don't you? A. Well, I would say the last part of April; the latter part of April.

The Court: What month comes after April?

The Witness: May.

The Court: What you mean is——

The Witness: The latter part of March or the first part of April is what I meant to say.

5052 Q. Was it after May 22nd you had that talk at Seeman's you have testified to? A. It was before the contract was signed. Before May 22nd.

Q. Well, did you have these other talks that you have testified to after the contract was signed? A. One of them, yes, sir.

Q. When was that? A. One at Gristede's.

Q. And that was when? A. The latter part of May.

Q. Did you testify a f moments ago that it was in March, 1937? A. If I did I was mistaken. It was May.

Q. Well, did you testify it was March of 1937? A. I believe I did say March, yes, sir.

Q. If you did you were wrong? A. Yes, sir.

Q. Now, was it Stimus that had the conversation with you? A. At Gristede's?

Q. Yes. A. Yes, sir.

Q. What time do you say now that that conversation was had? A. Between 7.30 and a quarter of eight in the morning.

Q. I mean what month? A. The latter part of May.

Q. Then Stimus said to you what the hell are you doing up here without Local 807 or without him? A. Without him. He was supposed to be our New York man. 5054

Q. Then he said to you that you would have to talk to the steward, Mr. Campbell? A. He would have to talk to him; not me. He would.

Q. Did he say that Mr. Campbell was the steward? A. He said he was his superior, steward or boss or whatever you call it.

Q. Did he say "steward"? A. Delegate. His delegate.

Q. Now, which did he say? A. Delegate.

Q. He didn't say steward? A. No, sir. A steward is in the garage; not in the union. My mistake.

Q. Do you realize you said he would have to talk to Campbell, the steward? A. Yes, sir.

Q. You were in error when you said that? A. Yes, sir.

Q. Wasn't Stimus the steward on the job? A. Stimus was the steward on our job, yes, sir. 5055

Q. So then, as I understand it, you have testified that Stimus went to call Campbell up? A. Yes, sir.

Q. And he couldn't get him? A. Yes, sir.

Q. So he said all right, in substance? A. He said there was nothing he could do.

Q. Couldn't do anything about it? A. That is what he told me.

Q. You went right ahead and unloaded your load? A. Finished unloading the load, yes, sir.

Q. And drove home to Bridgeton? A. Yes.

Q. And didn't pay anybody for it? A. No, sir.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

(Witness excused.)

The Court: Next witness.

5057 ALFONSO BRAGO, Rosenhayn, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

(Short recess.)

Direct examination by Mr. Ennis.

Q. Mr. Brago, by whom are you employed? A. LoBiondo. Mr. LoBiondo; Frank LoBiondo.

Q. What is your occupation? A. Chauffeur.

Q. Were you employed by him in the beginning of 1937? A. Yes, sir.

Q. Are you a member of any union? A. Local 590, South Jersey.

5058 Q. Is that the Teamsters' Union? A. That is right.

Q. When did you join that union? A. June, 1934.

Q. Did you drive trucks for LoBiondo into New York City at the beginning of 1937? A. Yes, sir.

Q. At that time who unloaded your trucks? A. Why, I did and the helper.

Q. You always had a helper with you? A. That is right.

Q. Did a time come when you did not unload your own trucks? A. Yes, sir.

Q. When? A. Why, some time during May, 1937.

Q. Do you recall the first occasion? A. Yes.

Q. Where were you? A. Why, at Seeman Bros. at Beach Street, Beach and Hudson.

Q. What load did you have? A. I had a load of tomato juice for Seeman Bros.

Q. Did you have a conversation with anyone at that place? A. Yes, I did.

Q. Do you know the person with whom you had the conversation? A. Well, in what form? I mean——

By the Court.

Q. Well, had you ever seen the person before? A. Yes, I had. 5060

Q. Have you ever seen him since? A. I am referring to the clerk—I mean the receiving clerk at Seeman's.

Q. Well, was there anybody else you saw there on that occasion whom you knew? A. No, not outside of the men that worked at Seeman's platform.

Q. Well, did somebody unload your truck on that occasion besides your helper and yourself? A. Why——

Q. Just answer yes or no. A. Yes.

Q. And had you ever seen the person who unloaded your truck prior to that time? A. No, I had not.

Q. And have you ever seen that person since? A. Yes, sir.

Q. And would you know that person if you saw him now? A. Yes, I would. 5061

Q. And would you look around and see if you observe that person in the room?

Mr. Ennis: May I ask first, your Honor, what the person's name is, if he knows?

The Witness: The person's name was Eddie Stimus.

By Mr. Ennis.

Q. After that first occasion did he work on your trucks upon other occasions? A. Yes, he did.

Q. Going back to that first time, did he show you anything? A. Why——

Mr. Boudin: Just yes or no.

The Court: Just yes or no. Just answer yes or no.

A. (Continued) He did.

5063 The Court: What was it?

The Witness: It was a union book.

Q. Did you look at it? A. Yes, I did.

Q. What did you see on it? A. See Eddie Stimus on it. Eddie Stimus.

Q. The name? A. That is right.

Q. Did you see anything else on it? A. Stamps, Local 807.

Q. You saw that on his book? A. That is right, yes, sir.

Q. Had you started to unload when you first saw him? A. No; I was getting ready—I was getting ready to unload, waiting for word from the receiver.

Q. And where were you when you first saw him? A. 5064 Why, when I first saw him I was coming down from talking to Mr. Seeman, and when I come down there, down to the store, he was starting to unload it.

Q. He was on your truck? A. Unloading.

Q. Unloading your truck? A. That is right.

Q. Had you ever seen him before? A. No, I had not.

Q. Did you have a conversation with him at that time? A. When I seen him unloading my truck?

Q. Yes. A. Yes, I did.

Q. What was the conversation?

Mr. Maguire: That is objected to.
The Court: Overruled.
Mr. Maguire: Exception.

Q. What was the conversation? A. Well, when I come down from talking with Mr. Seeman, this man was unloading my truck as I came down, and I asked him who he was; and he said, "I am a Local 807 man and I come to unload your truck." And I says, "Well, I have no privilege to hire you." He said, "I will take care of that part." And he proceeded to unload.

5066

Q. What did you say? A. I told him I could not pay him; I did not have the money, and I could not hire him; he is unloading at his own risk. And I had been warned—

The Court: No. Did you tell him that?
The Witness: No.

Q. Only the conversation between the two of you. A. That is all. He proceeded to unload.

Q. Was anyone else there while you were talking to him? A. No. There had been before him.

Q. Before you talked to him? A. Yes, sir.

Q. Who had been there? A. Why, as I backed up to the platform—I had no sooner backed up to the platform when a Ford roadster, a Model A, approached and three men came to me——

5067

Q. Did they get out of——

Mr. Maguire: I object to that.
The Court: Overruled.
Mr. Maguire: Exception.

Q. Did they get out of the roadster? A. They got out of the roadster and approached me——

Mr. Maguire: I object to the conversation.

The Court: He has not given any.

Mr. Maguire: He is about to give one.

The Court: Well, I don't know. He says three men got out and approached him.

A. (Continued) And approached me and asked me——

Q. No, just a minute.

The Court: Not what they asked you.

A. They asked me if I——

5069

The Court: No.

Q. No, don't give the conversation. They approached you? A. Yes.

Q. Did they speak to you? Yes or no? A. Yes.

Q. Did you see anything on their clothing? A. Why, yes.

Q. Had you ever seen these men before? A. No, sir.

Q. Have you ever seen them since? A. I don't recall.

Q. What did you see on their clothing? A. 807 buttons.

Q. What did they say to you?

Mr. Maguire: Objected to.

The Court: Overruled.

5070

Mr. Maguire: Exception.

A. What did they say to me?

Q. Yes. A. Why, they asked me if I had a Local 807 man on my truck, and I told him no, and they told me, warned me that I should not unload that unless I had hired——

Mr. Maguire: I move to strike it out.

The Court: Strike it out, the warning.

Q. What did they say? What were their words? A. Well, they told me if I knew what was good for me I would lay off. That meant not to go back and unload that truck.

The Court: No. Strike out what it meant.

Q. What did you do after they said it? A. I went and made a phone call to Mr. LoBiondo at the home office.

Q. Well, after you made the phone call what did you do? A. I went and had a talk with Mr. Seeman.

Q. And after you had a talk with Mr. Seeman, what did you do? A. I come back to the truck.

Q. And did you see somebody on the truck then? A. That is right, Mr. Stimus. 5072

Q. How long did it take to unload the truck? A. About an hour and a half.

Q. After the truck was unloaded, what did you do? A. I went home.

Q. Before you went home and after the truck was unloaded did you have any further conversation with Stimus? A. Yes, sir.

Q. What was said?

Mr. Maguire: Same objection.
The Court: Overruled.
Mr. Maguire: Exception.

A. Eddie give me a slip of paper with the price of $9.42 written on it, and told me to give it to the boss with his name signed to it, and told me to give it to him when I got home, to send the money back, the price of $9.42. 5073

Q. He told you all that? A. Yes, sir.

Q. What did you do when you got home? A. When I got home I give it to the boss.

Mr. Ennis: That is all.
The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Is Stimus the only man that you knew on that morning in May of 1937 whom you met at Seeman's platform? A. I didn't know Stimus.

Q. Well, you knew him afterwards, didn't you? A. After that morning I knew him, yes, sir.

Q. You say you saw a book with his name on it? A. Yes.

Q. And you met him afterwards? A. Yes.

Q. Was he working on the trucks of your employer during 1937, after May? A. Yes.

5075 Q. And up to June 1st of 1938? A. In 1938 I wasn't working there for a few months.

Q. I see. Did you work all during 1937? A. Yes.

Q. Did you— A. No, I beg pardon, I didn't. I went off in August, 1937.

Q. Well, do you know whether or not this conversation you had with Stimus was after May 22, 1937? A. After?

Q. Was it after May 22, 1937? A. No; I thought it was around the latter part of April, if I am right; I thought it was, or the beginning of May.

Q. Well, had you talked to your employer about a contract between Local 807 and his concern before you saw Stimus? A. About a contract?

Q. Yes. A. No, sir.

5076 Q. Well, will you look over here and see if you see Stimus among these defendants over here, the men that sit on your right?

The Court: Well, do we need to take the time for that?

A. No, I don't.

Mr. Murray: If it is conceded, if your Honor please, that he is not here, I shan't ask the question.

The Court: Well, by consent of counsel the jury have a list of all of the defendants who are on trial, and the name of Stimus does not appear on the list, and therefore he is not here.

Mr. Murray: It is all right with me, Judge.

The Court: All right.

Q. Now, when did you last see Stimus? A. Why, I run across him down here during noon hour.

Q. Did you have lunch with him? A. No.

Q. Did you eat in the same place where he ate? A. No.

Q. Did you see him driving a truck? A. Yes, sir.

5078

Q. Whose truck was it? A. LoBiondo's.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

The Court: Excused.

(Witness excused.)

The Court: Next witness.

Mr. Ennis: I will call Carl Calkins.

CARL CALKINS, residing at Franklinville, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

5079

Direct examination by Mr. Ennis.

Q. Mr. Calkins, by whom were you employed in May, 1938? A. Perry's Express.

Q. Where was that business located? A. Buffalo, New York.

Q. Did you drive merchandise into New York City during that month for Perry? A. Yes.

Q. Do you recall to what destination in New York City you drove such merchandise? A. 33rd and Tenth Avenue.

Q. What was at 33rd and Tenth Avenue? A. There was a gas station.

Q. A gas station? A. Yes.

Q. Do you recall where the merchandise was consigned to, where you were taking? A. No.

Q. Did you have any talk with anyone about unloading it? A. Old New York Freight Forwarding.

Q. Is that where you were taking the merchandise to? A. Yes.

5081 *By the Court.*

Q. Well, did you talk to somebody connected with that concern? A. Yes.

By Mr. Ennis.

Q. Did you talk to anybody else about unloading it? A. No.

Q. Did you take the merchandise down to the Old New York Freight Forwarding? A. Yes.

Q. Where is that place? A. Hudson and 13th Street.

Q. Do you recall what the merchandise was? A. Well, it was export, some kind of sand, white sand.

Q. White sand? A. Yes.

Q. For export? A. Yes.

5082 Mr. Bondin: I move to strike "for export". The answer, I take it, is white sand.

The Court: Well, strike it out. There might be some places abroad where they need some sand; but we will keep the sand here and grant your motion to strike it out.

Q. Did you unload that sand? A. I did, after they held us up——

The Court: No, just answer yes or no, whether it was unloaded.

The Witness: Yes.

The Court: Who unloaded it, you or your helper or somebody else?

The Witness: Union man.

Q. Do you know the name of the person who unloaded it? A. Yes.

Q. Who? A. Eddie Weinheimer.

Q. Will you stand and look around this court room and tell us if you see that man? A. (Standing) Yes, he is over there.

5084

Q. What row is he in? A. Second row.

Q. And which chair from the left end? A. First chair.

Q. First chair from the left end in the second row? A. Yes.

Mr. Ennis: Will the clerk call the name of Eddie Weinheimer?

The Court: Yes.

The Clerk: Edward Weinheimer.

(A man stood.)

Q. Is that the man? A. Yes, sir.

Q. Where did you first see him on that occasion? A. 13th and Hudson Street.

Q. At the Old New York Freight Forwarding? A. Yes.

5085

Q. Was anyone with him? A. Three or four guys, I don't know who they was.

Q. Did you have any conversation with him? A. No.

Q. Were you unloading your truck when you saw him? A. We was going to unload it.

The Court: Who got there first, you or Eddie Weinheimer?

The Witness: I did.

Q. Had you started to unload it when you saw him? A. No.

The Court: Had you ever seen him before?

The Witness: No.

Q. Where did you go after you saw him? A. 22nd and West Street.

Q. Did you see anyone there? A. Eddie Weinheimer and these three guys.

Q. What is it? A. Eddie Weinheimer and these three guys.

Q. Will you keep your hand down from your mouth and
5087 speak a little louder?

The Court: "Eddie Weinheimer and these three guys."

Mr. Ennis: Yes, I can hear him, your Honor, but I am afraid the jurors cannot.

Q. Did you have any conversation with him there? A. No.

Q. Was there anyone on your truck there when you saw him? A. Yes.

Q. Who was he? A. I don't know what his name was: he was from Old New York Freight Forwarding.

Q. Did he in your presence have any conversation with Weinheimer? A. Yes.

5088 Q. Did you say "yes"? A. Yes.

Q. What was said?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Was this before or after the truck was unloaded?

The Witness: No, before.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was said, Mr. Calkins, in your presence? A. Eddie asked me what we had on: I told him. He said he could not unload it.

Q. What did you say? A. He said he could not unload it.

Q. Who said he could not unload it? A. Eddie Weinheimer.

Q. Whom did he say that to? Did he say that to you or to the union man present? A. To the union guy.

Q. Did he say anything else? A. He said Perry had not signed up; could not unload it.

Q. Where did you go with the truck then? A. Back to the Old New York Freight Forwarding. 5090

Q. Where were you taking the truck when you saw Eddie Weinheimer on 25th Street? A. On the pier.

Q. To what pier? A. I think it is 22, something like that.

Q. And after you took the truck back to Old New York Freight Forwarding, where did you go? A. In the office.

The Court: Just a moment until I understand this.

By the Court.

Q. When you reached New York with this truck you went to some pier? A. Yes.

Q. Do you remember what the number of the pier was? 5091
A. I think it is 21 or 22.

Q. North River or East River? A. East River.

Q. And that is where you saw Eddie Weinheimer for the first time? A. No.

Q. Where did you see him for the first time? A. Old New York Freight Forwarding.

Q. Then you first went to the Old New York Freight Forwarding? A. Yes.

Q. There you saw Weinheimer? A. Yes.

Q. Did you have any conversation with him there? A. No.

Q. Did he have any conversation with somebody else in your presence there? A. Not that I know of.

Q. Then from the Old New York Freight Forwarding Company did you take somebody on your truck with you? A. This union man.

Q. And then you went from there to the pier? A. Yes.

Q. And that is the place where you were to discharge the sand? A. That is right.

Q. And then you had the conversation with Weinheimer?

5093 A. Yes, sir.

Q. Now, did you immediately unload any sand there? A. No.

Q. Or did you go away? A. I went away from there.

Q. Where did you go to? A. Back to Old New York Freight Forwarding.

Q. Now, when you got to Old New York Freight Forwarding did you have any further conversation? A. No. I went into the office.

Q. Who went in? A. Me and this union man.

Q. That is the man who had picked up there? A. Yes.

Q. Where was Eddie Weinheimer at that time? A. He was out there in the car.

Q. Well, did you have a conversation with the office? A. Told him that——

5094 Q. Just yes or no. A. No—yes.

Q. Then after you had that conversation did you go anywhere? A. Came over here.

Q. Well, when you say "over here" you don't mean at the court house? A. No.

Q. Where do you mean? Where did you go from the Old New York Freight Forwarding after you had that conversation in the office? A. I went to the United States Department of Justice.

By Mr. Ennis.

Q. In this building? A. Yes.

Q. And then where did you go?

By the Court.

Q. Well, did you see anybody here in this building? A. Yes.

Q. Did you have a talk with somebody? A. Yes.

Q. And then after that talk where did you go? A. Sent three men over there with me.

Q. Sent them over where? A. 13th and Hudson.

Q. All right. Now, after you got back to 13th and 5096
Hudson, where was your truck? A. In a parking lot.

Q. And who was there with the truck? A. No one.

Q. Well, what did you do then? A. They went——

Q. No, where did you go after that? Did you get on your truck? A. No.

Q. Did you see somebody there? A. These three guys went to see Eddie Weinheimer and had a talk with him.

Q. What three guys? A. That they sent over here from.

Q. You mean these three men that left this building with you? A. Yes.

Q. They went and had a talk with Weinheimer? A. Yes.

Q. Where was Weinheimer at that time? A. He was there, not far. 5097

Q. Well, after they had that talk with Weinheimer did your truck go anywhere? A. No.

Q. Did you go anywhere? A. No.

Q. When did you take the truck out of there? A. Well, these guys told me——

Q. No, never mind what they told you. When did you take your truck out? A. On a Monday. This was on a Friday; I took it out on a Monday.

Q. Did your truck remain there from Friday to Monday? A. Yes.

By Mr. Ennis.

Q. Now, when these three men left this building with you and went to the place where your truck was, did you say that Eddie Weinheimer was there? A. Yes.

Q. Did you say anything to Eddie Weinheimer then? A. No.

Q. Did these three men say anything to him in your presence? A. Yes.

5099 Q. What was said?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. They asked him what the trouble was.

Q. What did he say? A. He told him that it was tied up.

Q. Will you take your hand down from your mouth? A. Yes.

Q. What else was said? A. And they turned around to me, these three guys, and told me I could go in and unload, and Eddie Weinheimer told me I hadn't better.

5100 Q. What else did he say to you? A. If I did it would be worse for me.

Q. What did you say? A. I told him I wouldn't.

Q. Was that on the Friday? A. Yes.

Q. What did you do then? A. I took my truck in there and locked it up, and I called up Buffalo and I told my boss.

Q. Then what happened? A. He came down on a Monday and straightened it out.

Q. Did you drive the truck on Monday? A. Me and Eddie Weinheimer went and unloaded it.

Q. Where did you drive it to? A. 22nd and West Street.

Q. Was Eddie Weinheimer with you? A. Yes.

Q. Did he unload it? A. Yes.

Q. Did you help? A. Yes.

Q. Did you give him anything? A. No.

Q. Did you see your boss give him anything? A. No.

Q. Did you ever have Eddie Weinheimer on your truck after that time? A. Yes.

Q. Many times? A. Oh, quite a few times.

5102

Mr. Ennis: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. When Weinheimer was on your truck after this occasion that you speak of, do you know whether or not Mr. Perry had signed a contract with Local 807? A. Yes.

Q. Do you testify that you first saw Weinheimer at 33rd Street and Tenth Avenue? A. Well, that was after.

Q. At a gas station? A. Yes.

Q. Is that where you first saw him? A. No.

Q. Where did you first see him? A. 13th and Hudson.

Q. And can you fix the date? A. In May, I think; it was on the 9th, I think.

5103

Q. May of 1937, was it? A. Yes—1938.

Q. Beg pardon? A. 1938.

Q. Did Weinheimer talk to you at that place? A. Yes.

Q. Did he talk to you at 13th Street and Hudson? A. Yes.

Q. Was that the first place that you say you saw Weinheimer? A. Yes.

Q. Well, was there a man on your truck at the time that Weinheimer first spoke to you? A. Yes.

Q. Well, where did that man get on your truck? A. 13th and Hudson Street.

Q. And how long before you saw Weinheimer did he get on the truck? A. He got on right there.

Q. Was Weinheimer present at the time? A. No.

Q. Do you know how long it was before you saw Weinheimer that this man got on your truck? A. No, I couldn't guess that.

Q. Did you know the man's name? A. Weinheimer?

Q. No; this man that got on your truck. A. No, I couldn't say what his name was.

Q. Had you ever seen him before? A. No.

5105 Q. Had you ever seen him afterwards? A. No.

Q. How was he dressed? A. In his working clothes.

Q. Is there any other description that you can give us of the man beyond the fact that he was dressed in working clothes? A. No.

Q. Did he show you anything? A. No.

Q. Did he give you a name? A. No.

Mr. Murray: That is all. If your Honor please, I move to strike out the testimony of the witness to the effect that this unidentified man who got on his truck was a union man.

The Court: I will strike out that he was a union man. He was the man who got on the truck at the Old New York Freight Forwarding place and rode

5106 with him down to the pier.

Redirect examination by Mr. Ennis.

Q. Mr. Calkins, did this man who got on your truck at the Old Freight Forwarding—did you continue to drive the truck or did he drive it? A. No, I drove it.

Q. You drove it? A. Yes.

Q. Did he show you anything?

Mr. Murray: I object, if your Honor please.

A. No.

The Court: Overruled.
Mr. Murray: Exception.

Q. Your answer was no? A. No.
Q. Did you see anything on his clothing?

Mr. Murray: I object to it as leading and suggestive. 5108
The Court: Overruled.
Mr. Murray: Exception.
The Court: Yes or no.

A. Yes.
Q. What did you see? A. A button.
Q. What kind of a button? A. 807.
Q. Did it say 807 on it? A. Yes.

Mr. Ennis: If the Court pleases, on the basis of that testimony may the motion to strike now be denied?

The Court: The motion to strike will be reconsidered and denied. 5109
Mr. Murray: Exception.
Mr. Ennis: No further examination.
The Court: Any further cross-examination?
Mr. Murray: No further cross.
The Court: Witness excused.
(Witness excused.)
The Court: Next witness.
Mr. Ennis: I will call John E. Kaufman.

5110 *John E. Kaufman—For Government—Direct.*

JOHN E. KAUFMAN, residing at 63 North Delsea Drive, Glassboro, New Jersey, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Kaufman, where were you employed in January, 1938? A. National Fruit Products, Glassboro, New Jersey.

Q. What is the business of that company? A. Cider and vinegar and apple products.

Q. What was your position in the company then? A.
5111 Sales manager.

Q. Did your company ship their merchandise to New York City? A. Yes.

Q. Before December of 1937 who unloaded your merchandise in New York City? A. Our own drivers. Our own truck drivers.

Q. Did a time come when other persons unloaded it? A. Yes.

Q. When did that first occur? A. December, 1937.

Q. Did you have a conversation in New York City about the matter of unloading your merchandise? A. Yes.

Q. When? A. January, 1938.

Q. Where? A. In front of Francis H. Leggett & Company, 27th and Hudson.

5112 Q. Was one of your trucks there at the time? A. It was.

Q. Do you remember the driver? A. I do.

Q. Who? A. Earl Henderson.

Q. Do you recall what his load was that day? A. Cider and vinegar.

Q. With whom did you have the conversation? A. A man from the Local 807 by the name of Tony Venditti.

Mr. Maguire: I move that all but the name be stricken out.

The Court: Denied.

Mr. Maguire: Exception.

Q. Will you stand and look around this room and tell the Court and jury if you see that man here? A. (Standing) No, sir, I do not see him.

Q. Well, would you care to take a little more time and look around? You may step down and walk around, if you wish. A. No, sir. It has been two years. I don't see him.

Q. Was that the first time you saw him? A. Yes, sir. 5114

Q. Did you see him after that? A. Yes, I saw him in April of the same year, 1938.

Q. Did you see him at any other time? A. No, sir.

Q. Did you have a conversation with him on the second occasion? A. I did.

Q. Who was present at your first conversation with the man you call Venditti in addition to yourself? A. Earl Henderson, our truck driver.

Q. Was your truck unloaded at that time? A. No, it had not been unloaded yet.

Q. Who unloaded the truck that day? A. Our driver and this Venditti, Tony.

Q. Did you have any conversation with him before the unloading started? A. I did.

Q. Did you pay the man Tony Ventitti any money? 5115
A. Yes; I had to——

Mr. Maguire: I move to strike it out.

The Court: Strike that out, after the word "yes."

Q. How much did you pay him? A. $9.42.

Q. How did you pay him? A. In cash.

Q. How long did it take to unload the truck? A. Forty five minutes.

Q. I show you Government's Exhibit 7 for Identification. Will you look at the face of that exhibit, please? A. Yes?

Q. Is that the man you saw on that occasion? A. Yes, that is he.

The Court: Do you recognize that photograph?

Q. Do you recognize that photograph?. A. I recognize that photograph.

5117 *By the Court.*

Q. As a photograph of whom? A. Tony Venditti.

Q. The person you know as Tony Venditti? A. That is right.

By Mr. Ennis.

Q. Now, Mr. Kaufman, would you stand again and look around the room and tell us if you see the man with whom you had those two conversations? A. (Standing) Right over there (indicating). There he is.

By the Court.

5118 Q. What row? A. Third row.

Q. What seat from your right end? A. Fifth.

Mr. Ennis: May the clerk call the name of Tony Venditti?

The Court: Yes.

The Clerk: Tony Venditti.

(A man stood.)

By Mr. Ennis.

Q. Is that the man? A. Yes, sir.

Q. Now, will you be seated, please? On this first occasion what conversation did you have with Venditti?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was said? A. Well, I asked him why we could not unload our trucks, that we had a union man on the truck. He said that the Local 807 in New York 5120
did not recognize our Local 590 in Vineland, and that to bring our trucks in here we had to hire a City man from Local 807 or we could not unload in New York.

Q. What did you say? A. Well, I said, "If that is the case I guess I will have to pay." So I paid him $9.42.

Q. Now, when was the second occasion that you saw him? A. In April of 1938.

Q. Where? A. At Jaburg Bros., 99 Hudson Street.

Q. Was there anyone with him? A. There was another gentleman with him.

Q. Did you see him in the court room when you looked around before? A. No; I would not recognize him, I don't think.

Q. Who else was present? A. Our truck driver, by the 5121
name of Earl Hudson.

Q. Before you referred to an Earl Henderson. Is that the same person? A. No; it is two different drivers.

Q. Two different drivers? A. That is right.

Q. Did you have a conversation with Tony Venditti? A. I had.

Q. What was said?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. I said, "What is the matter we can't unload this load of stuff? It is only a few packages on there. I don't like to pay $9.42 for about fifteen minutes' work." He said, "I can't help it; if you only have one package on there I must collect $9.42." I said, "Why don't you give me a break and cut it down a little bit?" "Nothing doing," he said, "you have got to pay the $9.42 or you don't
5123 unload it.

Q. Did you pay him? A. I paid him.

Q. How much? A. $9.42.

Q. Did he unload? A. He helped our drivers to unload.

Q. How long did he help? A. Fifteen minutes.

Cross-examination by Mr. Murray.

Q. How many times after January, 1938, did you employ any Local 807 man up to June 1 of 1938? A. I have no record of that. I am sorry.

Q. And were those the only two occasions that you employed a Local 807 man? A. No. We had employed them in between that time.

5124 Q. Do you know on how many occasions? A. No, I don't. I am sorry.

Q. You say that on two occasions you paid Venditti? A. Yes, sir.

Q. On the second occasion did you know the man that was with Venditti? A. No, I didn't.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

The Court: Witness excused.

(Witness excused.)

EARL HUDSON, of Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Hudson, by whom were you employed in January, 1938? A. National Fruit Products Company.

Q. What did you do for them? A. Truck driver.

Q. Did you drive a truck for them into New York City? A. Yes.

Q. From where? A. From Glassboro.

Q. What kind of merchandise did you haul for them? 5126
A. Apple products.

Q. Apple products? A. Apple products, vinegar and cider.

Q. Vinegar and cider? A. Yes, sir.

Q. Where did you haul that merchandise to in New York City? To what consignee? A. Jaburg Bros., 100 Hudson Street, and Leggett's.

Q. Do you remember any others? A. Small houses around.

Q. Were the two you mentioned the principal consignees? A. Yes.

Q. Did you haul a lot of merchandise to them? A. Yes.

Q. In January of 1938 did you unload your own merchandise? A. Yes. We started to unload it.

Q. Who unloaded it with you? A. No one until the 5127
union caught up with us.

Mr. Murray: I move that it be stricken out.

The Court: Strike it out.

By the Court:

Q. Do you know John Kaufman? A. Yes, sir.

Q. Is he connected with the concern by whom you were employed in January, 1938? A. Yes, sir.

Q. Do you recall an occasion when you were making a delivery of apple products in New York and you saw Mr. Kaufman at the place of delivery? A. Yes, sir.

Q. Where was that? A. At Jaburg Bros.

Q. When was it? A. In February.

By Mr. Ennis.

Q. Who else was there? A. It was a city man named Tony. He was the man that stopped me.

5129 Q. Had you ever seen him before? A. No.

Q. Have you seen him since? A. Yes.

Q. Have you seen him on your truck? A. Well, he unloaded trucks after that.

Q. Do you know any other name for him but Tony? A. I did know his last name but I forgot it.

The Court: Would you know him if you saw him?

The Witness: Yes.

Q. Will you stand and look around and tell the Court and jury if you see him in this room. A. (Standing) I don't seem to see him now, no.

5130 The Court: Well——

The Witness: Yes. He sits back there, the fifth one from the right in the back row.

Mr. Ennis: May the clerk call the name?

Q. Which end? A. From this end (indicating).

The Court: Right end.

Mr. Ennis: May the clerk call the name of Tony Venditti?

The Court: Yes.
The Clerk: Tony Venditti.
(A man stood up.)

Q. Is that the man? A. Yes, sir.

Q. Will you take your seat again. Did you have a conversation with him on that occasion? A. Yes.

Q. What was said? A. Well, I was unloading when he came up and he said, "Do you have a city man?" And I said, "No." He said, "You must get one." And I said, "I only have a few packages and this case of vinegar." He said, "Regardless of what you have or how many pieces you have, you must have a city man," 5132

Q. Anything else said? A. So I just went up to the broker's and got the salesman; that is John Kaufman.

Q. Where did you go with Kaufman? A. Back to Jaburg Bros., and Kaufman was talking to Tony.

Q. He talked to Tony? A. Yes, sir.

Q. Did you see Kaufman give Tony anything? A. Yes, sir.

Q. What did he give him? A. He paid $9.42.

Q. He gave him $9.42? A. Yes. I had to go up to the broker's to get it.

Q. You went up to the broker's? A. Yes.

Q. And you brought it back? A. Yes.

Q. And whom did you give it to? A. Tony.

Q. You gave it to Tony? A. Yes.

Q. Did any other persons unload the merchandise you brought into New York City? A. That certain day? 5133

Q. No. On any other occasion? A. Yes. We had a man work at Leggett's.

Q. At Leggett's? A. Yes.

Q. When was that? A. That was the last of February.

Q. Who was that man? A. They call him Red.

Q. What do they call him? A. Red.

Q. Do you know any other name for him? A. I heard his last name but I don't remember it.

Q. How many times has he been on your truck?

Mr. Maguire: May we have the time?

A. Oh, several times.

The Court: He said the last part of February.

Mr. Maguire: May we have the year?

The Court: What year?

The Witness: 1938.

5135 Q. How many times did he work on your truck? A. Oh, it was several times.

Q. Would you know him if you saw him? A. Yes.

Q. Will you stand and look around and tell us if you see him here. A. (Standing) There he is hiding over there, the third one from the left in the back row (indicating).

Mr. Ennis: May the clerk call the name of Harry Zollinger.

The Clerk: Harry Zollinger.

(A man stood up.)

Q. Is that the man? A. Yes.

5136 Q. Did you have any conversation with him on that occasion at Leggett's? A. No. We always brought the money up.

Q. Did you pay him any money? A. Yes.

Q. How much? A. $9.42.

Q. Did he help unload? A. Yes.

Q. How long did it take? A. It averaged about an hour, with a straight load; that is one warehouse; that is at Leggett's.

Q. Did any other man in addition to those two ever work on your truck? A. No.

Q. Did you ever have any conversation with either of those men when other persons were present? A. Yes, sir. A fellow called George, he used to go around with Tony.

Q. Where did you see him with Tony? A. At Jaburg's.

Q. At Jaburg Bros.? A. At Jaburg Bros.

Q. Would you know him if you saw him? A. Yes.

Q. Will you stand and tell us if you see him here? A. (Standing) The third one in the front row.

Q. From which end? A. From the lower end (indicating).

5138

Mr. Ennis: May the clerk call the name of George Needelmann?

The Court: Yes.

The Clerk: George Needelmann.

(A man stood up.)

Q. Is that the man? A. Yes.

Q. Where did you see him? A. At Jaburg Bros.

Q. With Tony? A. Yes, sir.

Q. Did you ever have any conversation with him there? A. No. Tony always done the talking there.

Q. Well, was he present when you had a conversation with Tony? A. Yes.

Q. What was the conversation between you and Tony on that occasion? 5139

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. That was about unloading at Jaburg's at that time.

Q. What was said?

The Court: Well, did Needelmann say anything the man you just identified here?

The Witness: No.

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. Do you belong to a union? A. Yes, sir.

Q. What union did you belong to? A. 590, Vineland, New Jersey.

Q. How long did you belong to that? A. June, 1937.

5141

The Court: What year?

The Witness: June, 1937.

Q. Now, when you first talked to Tony Yenditti did he tell you that he was a member of a union here in New York? A. Yes.

Q. And that their union provided that over-the-road truckers who trucked at a distance greater than fifty miles were not recognized here? A. That is right. That was forty miles instead of fifty.

Q. Did he tell you there was a rule in the union here that union men were being employed in New York? A. That is right.

5142 Q. How many times did Tony Yenditti work with you? A. Quite a few times. I don't remember the number of times.

Q. Well, did he work in the summer of 1938 and up to June 1? A. I don't recall whether he did that long or not.

Q. Well, do you remember whether or not he worked at all in the month of March, say, of 1938? A. Yes, I am sure.

Q. Do you know how many times? A. No, I don't.

Q. Do you remember any of the times when he worked? A. No, I don't.

Q. Or any of the times when the man that you pointed out as Red Zollinger worked? A. Well, he was working on the trucks steady.

Q. When did he begin to work the trucks steady? A. I would say in March.

Q. That is, March of 1938? A. Yes.

Q. Have you seen him recently? A. Yes, I saw him recently.

Mr. Murray: That is all.

Mr. Ennis: No redirect. 5144

The Court: Next witness.

Mr. Cahill: That is our last witness for the day, your Honor.

The Court: Well, we will adjourn to tomorrow morning at half-past ten.

(Adjuonrned to May 7, 1940, at 10.30 A. M.)

New York, May 7, 1940, 10.30 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.) 5145

DONALD SAMUEL HUNTER, residing in Swedesboro, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Hunter, what was your business at the beginning of 1937? A. Motor freight.

Q. What was the name of your company? A. Independent. Donald Hunter.

Q. Between what points did you truck merchandise? A. Out of South Jersey. I covered states from North Carolina as far as Boston.

Q. Did you truck merchandise into New York City from South Jersey? A. I did.

Q. What kind of merchandise? A. Mostly canned goods.

Q. In the beginning of 1937 who unloaded your merchandise in New York City? A. At the beginning of 1937 the drivers unloaded themselves.

5147 Q. Were your drivers members of any union? A. Members of Local 590, American Federation of Labor, Vineland, New Jersey.

Q. Did a time come when the drivers did not unload your merchandise in New York City? A. Yes.

Q. When? A. It started—it was in August or September, 1937.

Q. Did you come to New York about that time? A. I did.

Q. Whom did you see? A. Different members of——

The Court: Well, did you see any particular person?

The Witness: I did.

The Court: Do you recall his name?

5148 The Witness: I saw Mr. Manuel Magan, Mr. Randazzo, Mr. Campbell, Mr. Devery, Mr. Hickey.

Q. Do you see any of those persons in the court room? Will you stand and look around the court room? A. (Standing) I do.

Q. Whom do you see? A. There is Mr. Randazzo there in the front row.

Q. Which seat from the left end? A. Fourth from the left.

Mr. Ennis: May the clerk call the name of Bernard Randazzo?

The Court: Yes.

The Clerk: Bernard Randazzo.

(A man stood.)

Q. Is that the man? A. That is the man. There is Frankie Downs. He is in the second row, the sixth man in.

Q. From the left end? A. Yes.

Mr. Ennis: May the clerk call the name of Frank Downs? 5150

The Clerk: Frank Downs.

(A man stood.)

Q. Is that the man? A. That is the man. I can't see all the faces.

The Court: Well, you can step down.

Q. Step down and walk over there if you wish. A. (Witness leaves stand and walks around court room.) Campbell.

Q. Who? A. Campbell.

Q. Which row? A. Second row.

5151

Mr. Ennis: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

(A man stood.)

Q. Is that the man? A. That is the man. That is all.

Q. You don't recognize any others? A. No.

Q. Will you take your seat again? A. (Witness returns to stand.)

Mr. Ennis: I request this to be marked a Government's exhibit for identification.

(Marked Government's Exhibit 59 for Identification.)

Q. I show you Government's Exhibit 59 for Identification. Do you recognize that as a picture of anyone you know? A. Yes. I recognize that as Mr. Manuel Magan.

Q. Whom you saw on this first occasion in New York? A. Yes.

5153 Q. Well, would you mind looking around the court room again, Mr. Hunter and see if you see that gentleman here? A. (Witness leaves stand and walks around room.) That is the gentleman right there (indicating).

Q. The second one in the second row? A. Yes.

Mr. Ennis: May the clerk call the name of Manuel Magan?

The Clerk: Manual Magan?

(A man stood.)

Q. Will you take your seat again, please? A. (Witness returns to stand.)

Q. Where did you first meet Manuel Magan, Mr. Hunter? A. On Leonard Street near Hudson Street.

5154 Q. When was that? A. That was in September, 1937.

Q. Did you have any trucks of merchandise in New York City on that day? A. I did.

Q. Did you have any conversation with Manuel Magan? A. I did.

Q. What was that conversation?

Mr. Bondin: That is objected to, if your Honor please.

The Court: Overruled.
Mr. Boudin: Exception.

A. I talked to him about getting my trucks unloaded. My trucks were refused to be unloaded.

Mr. Maguire: I move that it be stricken out.
The Court: Strike it out. What did you say?
The Witness: I said my trucks had been refused to be unloaded.
The Court: Did you say that to him?
The Witness: I asked him——
The Court: No. Did you say that to Magan?
The Witness: I asked Mr. Magan why my trucks were refused to be unloaded. He said because I refused to sign a contract with Local 807, and he claimed if I signed a contract with Local 807 and paid him $9.42 a load I could get unloaded and wouldn't have any trouble. 5156

Q. Did you ship in at that time straight loads or mixed loads? A. Most of them were straight loads. Occasionally a mixed load.

Q. How long did it take to unload? A. A straight load we could get unloaded as low as twenty minutes; maybe take an hour; mixed loads may take a half a day.

Q. What else was said in that conversation with Magan? A. He told me that it would be impossible for me to get a truck unloaded anywhere in the City of New York unless I did sign a contract; I had been paying him money through my drivers. My drivers had been paying him money. 5157

Mr. Maguire: I move that it be stricken out.
The Court: Strike it out.

Q. Mr. Hunter, just confine yourself to what you said and what he said in that conversation. Did you reply:

did you make any reply to this last remark of his? A. I told him I couldn't afford to pay it. He said it would be impossible for me to get unloaded unless I did; that they were not allowed to accept any money from me unless I signed a contract.

Q. He said that? A. Yes.

Q. Was anything else said at that time? A. I told him I didn't believe I could do it. I said I would see what happened.

Q. Did you ever see Manuel Magan again? A. I did.

Q. When was the next time? A. I think it was approximately two weeks later.

5159 Q. Where? A. I met him on a corner near his home.

Q. Do you remember where that was? A. He lived on Greenwich Street.

Q. In New York City? In New York City.

Q. And you met him near there? A. I met him near there, and I discussed with him——

Q. Just a minute. Did you have any trucks in New York City on that day? A. Not on that day I didn't, no; I had trucks previous to that.

Q. Did you have a conversation with him? A. On this particular day I did.

Q. What did you say? A. I came over to discuss the contract or how I could get my trucks unloaded. I had been unable to get them unloaded——

Q. No.

5160

The Court: No.

Q. Just what you said to him. A. On this particular day I said I wanted to see the contract; and he went with me down to Varick Street to the union headquarters.

Q. Did you see anyone there? A. I did.

Q. Whom did you see? A. That is where I met Mr. Hickey, Mr. Campbell and Mr. Devery.

Q. Anyone else? A. The bookkeeper was there; I don't recall his name.

Q. Was there a conversation? A. Yes.

Q. What was said? A. Campbell emphasized the fact that I could not get a truck unloaded in the City of New York or any of the metropolitan areas unless I signed a contract with him, and that if the shipper whom I was hauling for continued to send trucks in there with his merchandise on that were not contracted, he had some friends that could cause him some union trouble in his own plant.

Q. Campbell said that? A. Campbell told me that.

Q. Who was the shipper? A. Edgar F. Hurff & Company of Swedesboro, New Jersey. 5162

Q. Of Swedesboro, New Jersey, did you say? A. Yes.

Q. What else was said in that conversation? A. He told me that it would be impossible for me to get a truck unloaded anywheres in the metropolitan area unless I contracted with Local 807; I would not be allowed to hire—even their men would be refused employment with me, and it was to my advantage to contract with them.

Q. What else was said? A. Well, he handed me a contract, two copies of a contract and he explained the contract to me, and there were clauses in there that I could not live up to. He emphasized the fact that in the contract it said one man could only work on one truck, but if I was out of the City he would allow one man to work on two trucks provided he could do it in the eight hours.

Q. What did you say to that? A. Well, I said that according to the contract if there is eight hours' work I was entitled to eight hours' work regardless of how many trucks they could unload in that time. But he said no, they would not allow that; that he could only work on two trucks, and if he got his work done in less than eight hours and we had no more work on those two trucks, I had to pay him for the ful eight hours, regardless. 5163

Q. Did your truck sometimes go back light from New York City? A. Always.

Q. Always light? A. Yes.

Q. Was there anything else said in that conversation in the union hall? A. Not that I recall now.

Q. Did you subsequently ever have any further conversation with any of those men? A. I think that is the last time I saw either one of them, that meeting in the union hall.

Q. Did you give anyone anything while you were in the union hall? A. I did.

Q. To whom did you give something? A. I handed a
5165 check to Manuel Magan. He unloaded one of my trucks at R. C. Williams some time previous and had not received pay for it. I offered him a check that day and he accepted the check, but when shown to Mr. William Campbell, Campbell told him to hand it back, not to accept it, and told me to give him either cash or pay him a check without anything wrote on it, just a plain check. What he objected to——

Mr. Maguire: I move that that be stricken out.

The Court: Yes, strike it out.

Q. Did he say anything else? A. He said what he objected to——

The Court: What did who say?

5166

Q. Did Campbell say anything else? A. Campbell objected to the fact that I had wrote on the check what it was for, "Payment for unloading"——

The Court: No.

Mr. Ennis: I request that this paper be marked as a Government's Exhibit for Identification.

(Marked Government's Exhibit 60 for Identification.)

Q. I show you Government's Exhibit 60 for Identification. Will you examine that paper, Mr. Hunter. A. That is——

Q. Have you seen that paper before? A. Yes.

Q. Where? A. That is the check I offered Manuel Magan, and Campbell made him refuse.

Mr. Ennis: I offer it in evidence.

The Court: What is the date?

Mr. Ennis: Dated October 2, 1937.

(Government's Exhibit 60 for Identification received in evidence.)

(Mr. Ennis reads Government's Exhibit 60 to the jury.) 5168

Q. Mr. Hunter, do you recall any other occasion upon which you were in New York City when your merchandise was here? A. Yes.

Q. When was that? A. That was in September of 1937.

Q. Was your merchandise unloaded on that occasion? A. It was not.

Q. Where did you see it go? A. The load was consigned to R. C. Williams & Company in New York City. The truck was stopped——

The Court: Were you there?

Q. Were you there? A. Not when it was stopped. I was there later. 5169

Q. Just tell us what you saw.

The Court: Strike out "the truck was stopped."

By the Court.

Q. You had a truck in New York on that day? A. I did.

Q. Did you see it yourself? A. I did.

Q. And when you saw it where was it? A. Parked i the street near R. C. Williams.

Q. And who did you see there at that time? A. M driver, Walter Stanton.

By Mr. Ennis.

Q. Who else was there? A. Magan.

Q. Anyone with him? A. There were other men but I don't recall their names, who they were.

By the Court.

5171 Q. What was the name of your driver? A. Walter Stanton.

By Mr. Ennis.

Q. Was your truck unloaded there that day? A. No.

Q. Did you have any conversation with Magan? A. I did.

Q. What was the conversation? A. That he was not allowed to unload it and he would not permit it to be unloaded unless I signed a contract, which I refused to do.

Q. What did you do? A. It was necessary for me to take this truck——

5172 Mr. Maguire: I object to that.

The Court: No, strike out "it was necessary." Tell us what was said, if anything.

Q. Was there anything else said, Mr. Hunter? A. I said that I could not pay it or I could not—I beg your pardon—I could not sign the contract and live up to it. So I had to take the truck back to Jersey City——

Mr. Boudin: I object to it and move to strike it out.

The Court: Well, strike out the answer.

By the Court.

Q. Did you see the truck at any time after that? A. I did.

Q. Where did you see it? A. I followed the truck back to Jersey City.

By Mr. Ennis.

Q. Where to in Jersey City? A. To the Armstrong 5174
Trucking Company in Jersey City.

Q. Did you see anything done there with respect to the freight on your truck? A. I did.

Q. What did you see? A. We had another shipment which had been refused likewise——

Mr. Maguire: I move that that be stricken out.

The Court: Strike it out.

Q. What did you see at Armstrong's with respect to that shipment that you followed back to Jersey City? A. I followed the truck on from Armstrong to the Pennsylvania Railroad Yards and I helped unload that truck myself into a freight car with two other loads of freight that we had previously left at Armstrong Trucking—— 5175

Mr. Maguire: I object to this and move that it be stricken out.

The Court: Yes, strike it out.

A. (Continued) I loaded the freight into a freight car and consigned it to R. C. Williams in New York.

5176 *Donald S. Hunter—For Government—Direct.*

Mr. Maguire: As I understand it, your Honor struck it out.

The Court: I will allow him to state that he unloaded the freight from the truck which he had seen on the street near R. C. Williams & Company and put the contents of the truck, as and when removed into a freight car. I will strike out everything after that.

A. (Continued) I consigned the freight car——

The Court: No. You have not been asked about that.

5177 Q. What did you do after it was loaded into the freight car? A. I consigned the freight——

The Court: No, I will exclude that. You can show what he did by acts but not by his conclusions.

Mr. Ennis: I did not want the conclusion, your Honor.

The Court: Well, that is the way the record stands and there isn't anybody else doing anything about it, only myself.

Q. About that time did you have any other freight in New York City? A. I did.

Q. What freight? A. Two loads of canned goods into
5178 Austin, Nichols, Brooklyn.

Q. Was that freight unloaded at Austin, Nichols? A. All but about 50 cases.

Mr. Maguire: Was he there?

Q. Were you there at Austin, Nichols? A. No.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Where did you first see the person you have identified as Bernard Randazzo? A. On Leonard Street near Hudson.

Q. With whom? A. There was—Magan was there; there were several other members who I understand were from 807, but I did not know them.

Mr. Maguire: I move that that be stricken out.
The Court: Strike it out.

Q. Were there other persons there? A. There was.

Q. Did you know any of them? A. Truck drivers from my home town.

5180

By the Court.

Q. What was this date? A. It was in September, 1937.

Q. Was that before or after the occasion you have previously referred to when you had the conversation with Magan? A. This was the same day that we had one truck stopped at R. C. Williams——

Mr. Maguire: I move that it be stricken out.
The Court: Strike out after "the same day."

A. (Continued) The same day that I saw the truck at R. C. Williams.

By Mr. Ennis. 5181

Q. And on the day you had a conversation with Magan? A. Yes.

Q. Where did you first see Frank Downs? A. He was there that day.

By the Court.

Q. Is that the first time you had ever seen him? A. Yes.

By Mr. Ennis.

Q. Was he with Randazzo and Magan? A. Yes.

The Court: One moment.

By the Court.

Q. You have told us about a conversation you had with Magan and you have also told us about a conversation you had with Randazzo; is that right? A. No.

Q. Weren't you asked about a conversation with Randazzo? A. No.

5183 Q. Well, you said you saw Randazzo? A. Yes.

Q. Now, when you saw Randazzo was that at the same time or the same place that you had this conversation with Magan? A. On this particular day I talked to Magan in two different places.

Q. All right. Now, did you see Randazzo in both places? A. No, I saw Randazzo and Downs on Leonard Street near Hudson.

By Mr. Ennis.

Q. And you talked to Magan there? A. Yes.

Mr. Ennis: That is all.

5184 *Cross-examination by Mr. Murray.*

Q. What date, Mr. Hunter, was it that you went to the union rooms? A. I don't recall the exact date no more than it was September—no, I think that was in October. It was in October, 1937 when I went to the union headquarters.

Q. Where were the union headquarters? A. 74 Varick Street.

Q. Do you know what floor they were on? A. Second or third floor.

Q. Did you gain entrance by walking in a door there? A. Yes.

Q. Was the door open? A. It was opened for me by Manuel Magan.

Q. Did Magan have a key? A. No, the door was not locked.

Q. He just turned the knob of the door and opened it? A. The outside door.

Q. Yes. A. To the union headquarters, I believe, the bookkeeper opened it.

Q. When Magan opened the door where did you next 5186
go when you went through the door? A. I went into a large room. There was a big conference table there.

Q. Yes, and when you stepped in through this door, did you step into the room where the conference table was? A. We went through like a small office or something.

Q. You didn't see anyone there who stopped your progress in going through these rooms; did you? A. No.

Q. Did you see any windows that were slid open as you got into the union rooms? A. There was a window that was slid open where I saw a man paying in some money.

Q. But in the room where the window was slid open, that wasn't the room where you talked with Mr. Hickey and Mr. Campbell, was it? A. No.

Q. Did you hear any buzzers sounding there? A. Not 5187
that I can recall.

Q. Was there anyone there who prevented you from walking from one room into another? A. I didn't attempt to.

Q. Well, you did walk from one room to another, didn't you? A. Going in, yes.

Q. Did anyone try to prevent your walking from one room to another? A. No.

Q. Were the union rooms, as far as you could see, open for anyone who wanted to enter? A. No. I believe you had—the only access I saw to this conference room which was open was through this little office.

Q. Did you find any locked doors in that little office?

Mr. Cahill: Objected to as not within the scope of the direct.

The Court: I will allow it.

A. What was the question?

The Court: The stenographer will repeat the question.

5189

Q. (Read) A. If they were, they were opened before me; I didn't notice any.

Q. This window that you saw in the union rooms: Was that a window similar to a window you see in a bank where a cashier accepts money? A. Something like that, or a ticket window.

Q. Now, can you fix the date when you first met Mr. Magan? A. The exact day I can't.

Q. Was it in September of 1937? A. It was.

Q. Where did you first see him? A. Where I first seen him was on Leonard Street near Hudson.

Q. Did you have an appointment to meet Magan at that point? A. No.

5190

Q. When you talked to Magan did you ask him to unload your truck? A. No.

Q. Did you tell him that you would pay him if he would unload your truck? A. I didn't offer to pay him that day.

Q. No. I say did you tell him you would pay him? A. I did at one time or other. Whether it was that particular day or not I can't recollect.

Q. Now, is it a fact that Magan said to you in substance that he wasn't so much in getting work for himself as he was interested in unionizing the job? A. No.

Q. Did he ever tell you in any conversation you had with him or he with you that his particular concern was not about getting work? A. He told me his concern was in getting work.

Q. Well, you offered him work, didn't you? A. Not at that time. I said that I didn't want to hire two men to do one man's work.

Q. When did you have that conversation? A. That was the day I met him in New York.

5192

The Court: The first time?

The Witness: Yes, the first time.

Q. Well, on any occasion that you met Magan did he tell you that he couldn't unload your truck because it was a union rule? A. Yes.

Q. That over-the-road shippers were first obliged to sign a contract with Local 807? A. That is what he told me.

Q. And on the second occasion that you met him, did you ask him to unload the truck? A. I asked him one time to unload the truck. He said the union wouldn't allow him.

Q. Was it on that occasion that you went to the union rooms? A. The day I asked him I had a truck in New York City; the day I went to the union rooms I did not have a truck in the City.

5193

Q. Well, the day you talked with him is the day you had a truck in the City, is that correct? A. Yes.

Q. Was that in September of 1937? A. Yes.

Q. Now, did you ever talk to Downs? A. Oh, I chatted, I guess, with all of them that day on the street.

Q. Did you ever talk with Downs? A. Yes.

Q. Did you ask Downs to unload your truck or trucks? A. No.

Q. Did you ask Randazzo to unload your truck or trucks? A. No.

Q. Did anyone recommend to you to see Magan? A. My drivers.

Q. Did you know a man named Mr. Strozyk? A. Yes.

Q. Who is he? A. He is another trucker from Swedesboro.

Q. Did you have a conversation with Mr. Strozyk before you saw Mr. Magan? A. No, sir.

Q. Did you ever have a conversation with Mr. Strozyk about the employment of Mr. Magan? A. No, sir.

Q. Did you tell Mr. Magan that you had a conversation
5195 with Mr. Strozyk? A. Mr. Magan told me he knew Strozyk and did Strozyk's work, but I never spoke to Strozyk about Magan.

Q. Did you know a man in Swedesboro named Mr. Byrnes? A. I do.

Q. Did you have a conversation with Mr. Byrnes recently concerning this case? A. What do you call "recently"?

Q. Within the last week. A. No, I haven't seen him in the last week.

Q. Have you talked with him concerning this case? A. About two weeks ago he told me that this case——

Q. Yes or no is the answer, if you please. A. Yes.

Q. Did you talk to him about the testimony you might
5196 give in this case? A. No.

Q. Did you talk to his lawyer? A. No. I didn't know he had a lawyer.

Mr. Murray: That is all.

Redirect examination by Mr. Ennis:

Q. On that occasion when you went up to the union hall with Magan, were both Mr. Devery and Mr. Hickey there? A. Yes.

Q. Now, during all this time, 1937, when you were bringing your trucks in, were your drivers members of Local 590? A. All my drivers were members in good standing in Local 590.

Mr. Ennis: Thank you. That is all.

The Court: Just a moment.

By the Court.

Q. You have told us about several conversations, and I would like to have them a little more definitely identified. The first occasion that you talked with Magan you said was on Leonard Street? A. Yes, sir. 5198

Q. Were other people present whom you have identified here in court? A. Yes.

Q. Now you had another talk with Magan on a subsequent occasion and went down to union headquarters? A. That is right.

Q. Is that right? A. Yes. When I went to union headquarters was at a later time.

Q. That is what I am saying. A. Yes.

Q. That is conversation No. 2 with Magan? A. Yes.

Q. On that occasion you were shown a form of contract? A. Yes.

Q. You didn't sign it? A. I did not.

Q. Now, there was a third occasion you have testified, as I understand it, when you talked to Magan twice on the same day. A. I talked to him twice on the same day the 5199 first day that I met him.

Q. Was that conversation up at the Williams place? A. The first conversation was at Hudson and Leonard. Later the same day I talked to him at R. C. Williams' place.

Q. Was that the occasion when you said that you saw this truck parked near Williams' place, or was that on a later occasion? A. That was the same day.

Q. Then this circumstance you have referred to with respect to a truck being parked near the Williams plant, which truck you afterwards assisted in unloading in New Jersey, was on the occasion of the first time that you ever saw Magan, is that right? A. That is right.

Q. Now, was the conversation that you had on Leonard Street before or after the conversation you had up near the place of business of R. C. Williams? A. The first conversation was on Leonard Street. The second at R. C. Williams.

Q. All right. Now you said that at one or the other of these conversations Randazzo and Downs were present?
5201 A. That is right.

Q. Was the conversation that you had with Magan in the presence of Randazzo and Downs, or did you also have a conversation with Randazzo and Downs? A. When I was talking to Magan I don't think they were present. I was talking to him by myself off to the side.

Q. All right. After this circumstance when you went to the headquarters did you have a conversation with Magan after that? A. After I left the headquarters?

Q. Well— A. I drove him down to the corner——

Q. No. Was there any other occasion after that when you had a conversation with him? A. The day that I saw him, when I left him after leaving the union headquarters, is the last time I have seen him until to-day.

Q. That is the time you say Campbell showed you a
5202 form of contract? A. Yes.

Q. And you delivered a check? A. Yes.

Q. To Magan in Campbell's presence? A. Yes.

Q. That is the last time you saw Magan? A. That is right.

Q. Did you ever see Campbell after that? A. No.

Mr. Murray: Your Honor, might I be permitted a few more questions?

The Court: Yes, certainly. I merely wanted to get straightened out on when this conversation took place, because frankly there was some confusion in my mind, and I didn't know whether there was any in the minds of the jurors or not, but it was not quite definite as to the succession in which these conversations took place. I thought the one at the Williams place was the last one; now it appears to have been on the first day.

Recross-examination by Mr. Murray.

Q. Mr. Hunter, while you were in conversation with Magan at the R. C. Williams place, you said, did you not, that you saw Randazzo in that neighborhood? A. No; I think we left him down on Leonard Street. 5204

Q. Well, when you had a conversation with Magan at which Randanzzo was present, or at least was in the neighborhood, was Randazzo then unloading a truck? A. No. The occasion was that there was five or six trucks there being unloaded.

The Court: Where?

The Witness: On Leonard Street.

Q. Well, did you know whether or not one of the Byrnes' trucks was there at that time? A. They were all Byrnes' trucks. 5205

Q. Did you have any talk with Randazzo about unloading your truck? A. No.

Q. Did you have any talk with Downs about unloading your truck? A. No.

Q. Now, after you held a conversation with Magan or before on this first occasion did you talk to the shipping clerk of R. C. Williams? A. I did.

5206 *Donald S. Hunter—For Government—Recross.*

Q. Did the shipping clerk tell you that R. C. Williams refused to receive trucks unless Local 807 was hired to unload them?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow him to say yes or no.

A. Repeat the question.

The Court: The stenographer will repeat the question.

Q. (Read.) A. Not in those words, no.

Q. Did he tell you that in substance? A. He said that
5207 his men would go out on strike if they accepted; they threatened to do that. The steward inside came up and said, "If you accept this freight, we will go on strike."

The Court: Whose steward?

The Witness: R. C. Williams' steward.

Q. Do you know to whom the shipping clerk of R. C. Williams referred when he said his men would go out on strike? A. I talked to a man who said he was a Mr. Kurtz in R. C. Williams.

Q. Do you know whether or not Kurtz was employed by R. C. Williams? A. Yes. He was a sort of superintendent, or something.

Q. Did Kurtz tell you that R. C. Williams' platform men
5208 and other employees would go out on strike unless Local 807 men were employed? A. He said his men had threatened to go on strike if he accepted goods off my trucks not being unloaded by local 807.

Mr. Murray: That is all.

Mr. Ennis: No further redirect.

The Court: Excused. Next witness.

(Witness excused.)

WALTER STANTON, residing at 629 Green Street, Woodbury, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Stanton, by whom were you employed in the beginning of 1937? A. Donald S. Hunter.

Q. What did you do for him? A. Drove a truck.

Q. Between what points? A. Swedesboro, New York; all over New York State, Pennsylvania, New Jersey.

Q. What kind of merchandise did you drive from Swedesboro to New York? A. Canned goods. 5210

Q. Were you at that time a member of any labor union? A. A. F. of L., Local 590.

Q. Teamsters Union? A. That is right.

Q. In the beginning of 1937 who unloaded the merchandise you brought into New York? A. A man by the name of Manuel, the first name; I don't know his last name.

Q. Well, before he unloaded it who unloaded? A. He was the only man that ever unloaded any trucks that I was on.

Q. Well, before that person unloaded them did you unload any? A. I have unloaded, yes.

By the Court.

Q. Well, did anybody other than yourself ever unload your truck before this person Manuel unloaded it? A. No; no other; nobody only myself. 5211

Q. Now, do you recall when it was that he first unloaded your truck? A. No, I couldn't give you the date.

Q. Could you give us the year? A. Well, it would be in 1937.

Q. Could you give us the month? A. No, I couldn't give you the month.

Q. Do you remember what month it was you went to work? A. No, I couldn't tell you that.

By Mr. Ennis.

Q. What season of the year was it? A. It was in the summer and fall.

Q. Will you stand now and look around the court room and tell us if you see that man you call Manuel? A. (Witness stands.)

Q. You may step down if you can't see well from there and walk around. Mr. Stanton, you may step down if you wish. A. That is O.K. I can see. I don't recognize him
5213 as being here now.

Q. Can you see everyone from there?

The Court: Can you get a full view of the countenance of everybody on the side of the room where you are looking from the position where you are standing?

The Witness: Yes, sir. No, I can't pick him out.

Q. Will you look at the face on this Government's Exhibit 59? Have you seen that person before? A. Yes.

Q. Who is that person? A. That is a man that unloaded.

Q. Is that the man you call Manuel? A. Yes.

5214 Q. Well, will you please look around again and tell us if you see him here? A. (Witness stands.) The man here in the front row is the only one that looks like him (indicating).

Q. You see a man that looks like him? A. The one here in the front row is the only one I see.

Mr. Murray: Your Honor, may I have the answer repeated?

The Court: Yes.
(Last two answers read.)

Q. How many times——

Mr. Murray: May I have the man indicated by the witness, if your Honor please?
The Court: Well, just a moment.

Q. How many times did you see this man Manuel?

Mr. Murray: I object to the question.
The Court: I will sustain it.

5216

By the Court.

Q. How many times, if more than once, did he unload or assist in unloading your truck during the year 1937? A. Twice that I recall.

Q. What person in what row indicating the number from this end, your right side, is it? A. The seventh man.

Q. The seventh man? A. Yes.

Q. What color suit has he on? A. Blue coat, green pants.

Mr. Murray: May I have the man rise, if your Honor please?
The Court: Yes.
(A man stood.)

5217

Q. Is that the man that you designated as seventh man? A. That is the one.

Mr. Murray: May I have his name entered on the record, if your Honor please?
The Court: If you will tell us what it is.
Mr. Murray: Randazzo, Bernard.

By Mr. Ennis.

Q. Mr. Stanton, do you care to look around further? A. I can't seem to recognize him.

Q. Well, from that distance can you see every face? A. Yes.

Q. From the direction you are looking? A. I can see them all.

Q. Will you take your seat again? Do you recall an occasion when you drove a truck from New York City to Jersey City? A. Yes.

Q. When was that? A. It was the last of September or
5219 the first of October, 1937.

Q. Had you driven that truck to New York City from Swedesboro? A. Yes.

Q. Did you have a load on? A. Yes.

Q. What was that load? A. Canned goods.

Q. Canned goods for where? A. R. C. Williams.

Q. Now, when you arrived at R. C. Williams did you unload there? A. That is where the load was for, but I could not unload because they told be that I couldn't——

The Court: No.

Mr. Maguire: I move that that be stricken.

The Court: Strike it out.

By the Court.

5220

Q. Did you ever get to R. C. Williams with that particular truck? A. Just parked in front of the place, that is all.

By Mr. Ennis.

Q. Did you see anyone there? A. Yes.

By the Court.

Q. Anyone whom you recall by name? A. Manuel is the only one, and the delegate, Mr. Campbell.

By Mr. Ennis.

Q. Had you ever seen Mr. Campbell before? A. No.

Q. Did you ever see him again? A. No.

By the Court.

Q. Would you know him if you saw him now? A. No.

By Mr. Ennis. 5222

Q. You would not know him if you saw him? A. No.

Q. Was anyone with Manuel and this Mr. Campbell? A. I just can't recall the number, but it was at least two or three men with him.

Q. Was anyone else there besides that group? A. Why, there were two men there from Commissioner Morgan's office.

Q. Anyone else? A. Not on that first time, no.

Q. Did you see the men from Commissioner Morgan's office do anything? A. They went into the——

Mr. Maguire: No, I object to that, unless it is yes or no.

The Court: I will allow him to say yes or no.

5223

Q. Did you see them do anything? A. They went into see——

Q. Just yes or no. A. Yes.

Q. What did you see them do?

Mr. Maguire: I object to it.

The Court: Sustained.

Q. Did you have any conversation with Manuel on that occasion? A. Yes.

Q. Did you have any conversation with Campbell? A. I don't recall that.

Q. Was he present when you had a conversation with Manuel? A. Yes, he was.

Q. What was the conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: May I say, on the ground that there is no identification, not binding on any of these defendants?

The Court: Yes.

5225 Mr. Maguire: Exception.

Q. What was the conversation? A. Manuel told him about that the contract had not been signed and he would not let me unload until the contract had been signed.

Q. Whom did he tell that to? A. Mr. Campbell.

Q. And what else was said? A. Well, they went in and saw the steward——

The Court: No, strike that out.

By the Court.

Q. Was there anything more said in your presence? A. That I had to have a contract signed before I could
5226 get unloaded.

By Mr. Ennis.

Q. Did the men from Morgan's office, Commissioner Morgan's office, say anything in your presence and in their presence? A. The only thing they said in my presence—

The Court: No, just say yes or no.

The Witness: Yes.

Q. What did they say?

Mr. Maguire: Objected to.
The Court: Sustained.

Q. Did you unload? Was that load unloaded there? A. No.
Q. Where did you take it? A. Jersey City.
Q. Where in Jersey City? A. Armstrong Trucking Company.
Q. What did you see happen to the load there?

Mr. Maguire: Objected to. It is immaterial.
The Court: Well, was it unloaded? 5228
The Witness: Yes.

Q. Did you unload it? A. Helped unload it.
Q. Where? A. On the platform.

Mr. Maguire: Objected to.
The Court: I will allow it.
Mr. Maguire: Exception.

Q. On the platform? A. Yes.
Q. Whereabouts was the platform? A. In the building.
Q. In the building? A. That is right.
Q. Then where did you go?

Mr. Maguire: Objected to as immaterial. 5229
The Court: What was the question?
Mr. Ennis: I asked him where he went after he unloaded it.

By the Court.

Q. Did you go back home? A. I went back to Swedesboro.

By Mr. Ennis.

Q. Did you bring another load to New York about that time? A. A couple of days later.

Q. Where did you bring that to? A. R. C. Williams.

Q. Did you unload that there? A. No.

Q. Did you see anyone you knew there? A. Well, I saw this Manuel.

Q. Anyone with him? A. I don't remember that now.

Q. Did you have any conversation with Manuel? A. About getting unloaded.

Q. Well, what did you say and what did he say?

5231 Mr. Maguire: Objected to.

By the Court.

Q. Had this Manuel ever unloaded or assisted in the unloading of your truck before this time? A. Yes.

Q. How long before? A. I could not tell you just about—I could not give you just the time. We had been coming in at different days.

Q. Well, was it a matter of days or weeks or months or years? A. Well, up to that time we had been unloading—well, I should say the truck that I drove, once a week anyhow.

Q. Well, how many times had Manuel unloaded your
5232 truck before this occasion when you took the truck over to Jersey City? A. I should say three or four times.

By Mr. Ennis.

Q. Was that truck unloaded that day? A. No.

Q. Did you take that truck away from there? A. Yes.

Q. Where did you take it?

Mr. Maguire: Objected to.
The Court: I will allow it.
Mr. Maguire: Exception.

A. It was taken to Jersey City and unloaded in a freight yard.

Q. Did you unload it in a freight car? A. I helped to.

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

Q. You helped to? A. Yes.

5234

Mr. Ennis: That is all.

Cross-examination by Mr. Murray.

Q. Mr. Stanton, are you able to identify anyone that you talked to at R. C. Williams concerning the unloading of your truck at this time? A. No, sir.

Mr. Murray: That is all.
Mr. Ennis: No further redirect.
The Court: Excused.
(Witness excused.)
The Court: Call the next witness.
Mr. Ennis: I will call Mr. Louis Layman.

5235

LOUIS LAYMAN, residing at 102 Kings Highway, Swedesboro, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. By whom were you employed in the beginning of 1937? A. Donald S. Hunter.

Q. What did you do for him?

Mr. Maguire: May I have the answer repeated?

The Court: Yes.

(Answer read.)

5237 The Court: Try and speak a little louder, Mr. Layman, so that all the parties interested here may understand what you say.

Q. What did you do for him? A. I drove a truck.

Q. Where to? A. I drove to New York City, Buffalo, and Richmond, Virginia.

Q. What kind of merchandise did you drive into New York City? A. Canned goods.

Q. Were you a member of any union? A. South Jersey, 590.

Q. Is that a teamsters' union? A. Yes, sir.

Q. In the beginning of 1937 who unloaded your trucks in New York City? A When we first started riding into New York City with canned goods, why, the first time I 5238 got in the City I was stopped——

Mr. Maguire: I move that that be stricken out.

The Court: Strike it out.

By the Court.

Q. The first time that you came into New York City driving a truck for Mr. Hunter, did you load your truck or did somebody else do it? A. Somebody else did it.

Q. Do you know the name of the person who unloaded your truck? A. Yes, sir.

Q. What is his name? A. Manuel Magan.

Q. And how many times did he unload your truck? A. Various numbers. I should say about twenty or thirty times.

Q. Would you know him if you saw him? A. I would not say for sure. I think I could recognize him.

By Mr. Ennis.

Q. Well, will you stand and look around the court room and tell us if you see him here. A. (Standing) (No answer.) 5240

Q. You may step down and walk around if you wish, Mr. Layman. A. I can't see them all (stepping down from witness stand).

Q. You may go closer if you wish. A. I think that there man in the gray suit, the second man in the second row (indicating).

Q. The second man in the second row? A. Yes.

Mr. Ennis: May the clerk call the name of Manuel Magan?

The Court: Yes.

The Clerk: Manuel Magan.

(A man stood up.)

5241

Q. Is that the man? A. Yes, sir.

Q. Will you take your seat again? A. Yes (returning to witness stand).

Q. Now, when was this first time you came into New York City? A. It was in September.

Q. Of what year? A. 1937. September of 1937.

Q. And where were you bringing your load that time? A. R. C. Williams.

Q. Where did you first see Manuel Magan? A. He stopped me on West Street——

Mr. Maguire: I move that that be stricken out.
The Court: Strike it out.

Q. Where did you see him? A. On West Street.

Q. Were you driving in your truck when you saw him first? A. I had stopped when I came across the ferry; I pulled over to West Street and stopped. I wanted to find out—I didn't know where R. C. Williams was, and I didn't know anything about New York City, and I wanted to find out, and he came over to the truck.

5243 Q. Did you have a conversation with him? A. Yes.

Q. Will you tell us, what did you say? A. He informed me that I had to hire a union man, what they call a City man, to unload my truck. Of course I didn't know anything about it.

Mr. Maguire: I move to strike it out.
The Court: Strike it out.

Q. Just what you said. A. He informed me what I had to do. I had to hire a man and pay him so much money to have the truck unloaded.

Q. What did you say? A. Well, I told him I didn't know anything about it; I would have to call back to my

5244 home office and call my boss and see what he said. So that is what I did.

Q. After you made a telephone call what did you do? A. Why, he went to R. C. Williams with me and helped me to unload the truck.

Q. How long did it take? A. It took us about three-quarters of an hour.

Q. Did you give him anything? A. Not right then I didn't. He said that he would take the money later on another truck——

Mr. Maguire: I object to that and move to strike it out.

The Court: Objection overruled. Motion denied.

Q. What did he say? A. He would wait for the money to come up the next day or the day afterwards, whichever the next truck was that came up with the money.

Q. Did you come up again? A. Well, I come up a few days afterwards.

Q. Where were you bringing the merchandise on that occasion? A. R. C. Williams.

Q. Did you meet Magan? A. Yes, sir.

Q. Where? A. At his home. 5246

Q. Where was that? A. On Greenwich Street, I think it was.

Q. Did you have a truck with you there? A. Yes, sir.

Q. Did you go to R. C. Williams? A. Yes, sir.

Q. Did he go to R. C. Williams with you? A. Yes, sir.

Q. Did he help you to unload the truck? A. Yes, sir.

Q. How long did it take? A. About an hour.

Q. Did you give him anything? A. I paid him then. I paid $9.42.

Q. Did he help you unload your truck on subsequent occasions? A. Yes, sir. He helped me to unload in R. C. Williams several times and different parts of the City.

Q. And did you pay him on these subsequent occasions? A. Yes, sir.

Q. How much did you pay him? A. $9.42. 5247

Mr. Ennis: That is all.

The Court: Cross-examine.

Mr. Cahill: It is a quarter of twelve, Judge.

The Court: I guess we will take a recess.

(Short recess.)

The Court: I would like to see counsel here at the bench for a moment.

5248 *Louis Layman—For Government—Cross.*

(Discussion between Court and counsel without the hearing of the jury.)

Cross-examination by Mr. Murray.

Q. When you met Mr. Magan at West Street for the first time, after you met him did you drive your truck to R. C. Williams? A. Yes, sir.

Q. And then did you call somebody? A. Yes, sir.

Q. Whom did you call? A. My boss.

Q. And then did two other men appear at R. C. Williams who said they were from Commissioner Morgan's office? A. No, sir.

5249

Q. Isn't it a fact that Magan told you to go ahead and unload your truck if you wanted to? A. No, sir.

Q. Didn't you go in and talk to the platform men of R. C. Williams? A. No, sir.

Q. Did you talk to the platform men there at any time? A. Yes, sir.

Q. When? A. One time when I went in there to unload.

Q. Did R. C. Williams men tell you, you couldn't unload unless there was a contract executed between Local 807 and your employer?

Mr. Cahill: I press the objection. That is immaterial.

The Court: Sustained.

5250

Mr. Murray: Exception.

The Court: I sustain the objection because of the indefiniteness of your question.

Q. Well, did you have a talk with a representative of R. C. Williams at R. C. Williams' place of business at any time concerning the unloading of your truck? A. Yes, sir.

Q. When was it? A. Why, I couldn't tell you a definite date or anything.

Q. Did you know what month it was?

The Court: Well, do you know what occasion it was, counting from the first time that you ever went there, down to the date when this conversation was had?

The Witness: About the third or fourth time I was there. That would probably be within probably two weeks from the first time I went there.

Q. Whom did you talk to connected with R. C. Williams?

A. What they call the shop steward.

Q. Did the shop steward of R. C. Williams tell you you couldn't unload unless a contract was signed with Local 807? 5252

Mr. Cahill: I press the objection that that is immaterial.

The Court: Overruled.

A. I don't recall whether he told me I couldn't unload or whether I had to have a City man to unload.

Q. Well, now, will you try to remember it as precisely as you can, what the representative of R. C. Williams did say to you? A. I know I backed the truck in there and he asked me if I had a City man. I told him no. Whether he told me I had to get one or not, I just don't recall.

Q. Did you back your truck into the platform of R. C. Williams on an occasion when Magan wasn't present? 5253
A. Yes, sir.

Q. Was it on that occasion that the R. C. Williams man told you that you had to have a City man? A. Yes, sir.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

(Witness excused.)

5254 *Harry L. Owens—For Government—Direct.*

HARRY L. OWENS, residing at 327 Madison Avenue, Baltimore, Maryland, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Owens, by whom were you employed at the beginning of 1937? A. Snowhite & Gerson, Bridgeton, New Jersey.

Q. What is their business? A. Trucking.

Q. What did you do for them? A. Drove trucks.

Q. Did you drive trucks into New York City? A. I did.

5255 Q. What merchandise did you haul for them? A. Glass es.

Q. At the beginning of 1937 who unloaded your merchandise in New York City? A. We unloaded ourselves, had helpers. The helper and driver unloaded them.

Q. How long would it take you to unload a straight load of glass bottles? A. Anywhere from 2 to 5 hours.

Q. Did a time come when you did not do your own unloading in New York City? A. Around June, 1937.

Q. Do you remember the first occasion upon which you did not unload your own trucks? A. No, I couldn't place it; the time and place and everything, I couldn't place it. It was in June.

Q. Do you know by name any person who unloaded your truck? A Not at that time, no.

5256 Q. Well, do you now? A. Later in 1937 I would.

Q. Yes. What is the name? A. When we had a steady man. John Gaughan.

Q. Did he work on your truck several times? A. Yes.

Q. Will you stand and look around this court room and tell the Court and jury if you see that man here? A. (Standing) Yes, I see him. I think I do. Yes.

Q. Where do you see him? A. The last row, second one from the far end.

Mr. Ennis: May the clerk call the name of John Gaughan?

The Clerk: John Gaughan.

(A man stood.)

Q. Is the man who arose that man? A. Yes.

Q. Where did you first see him? A. Whitall Tatum's warehouse, Varick Street.

Q. When? A. It was in November, around November, of 1937.

Q. Did he help you unload your truck that day? A. Yes.

Q. Was there anyone with him? A. No; he was all alone. 5258

Q. Did you have any conversation with him? A. Yes. He told me——

Mr. Boudin: One moment. Objected to.

The Court: Yes. Strike out after "yes."

Q. What was the conversation?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: You may answer.

Q. What was said? A. He asked me if I had a City man. I told him no. So he told me I would have to have a City man before I could unload. That is all that was said, and he went ahead and helped me unload. 5259

Q. Did you have any talk about paying him for working? A. Oh, he just asked me to have Mr. Snowhite send him a check.

Q. What did you say to that? A. I told him I would tell him, tell Mr. Snowhite when I got in.

Q. Did he work on your truck on subsequent occasions? A. I beg your pardon.

Q. Did he work on your truck on other occasions? A. Yes.

Q. Did you during this period ever deliver to the Starrett Lehigh? A. Yes.

Q. What merchandise did you deliver there? A. Glass bottles.

Q. Where is Starrett Lehigh? A. Around 29th and West Street.

Q. Did Gaughan go there with you on those occasions? A. Yes.

5261 Q. When? In what year was that? A. 1937 and 1938; part of 1938.

Q. Where did you meet Gaughan when you had a load for Starrett Lehigh? A. Whitall Tatum warehouse.

Q. Who drove the truck to Starrett? A. I did, but Mr. Gaughan would drive if I wanted him to.

Q. You drove the truck? A. Yes.

Q. When you arrived at Starrett's what did you do with the truck? A. I just backed it into the platform. Mr. Gaughan would guide me into the platform.

Q. Where would he stand when he guided you into the platform? A. In front of the truck, on the side of the truck.

Q. When you backed the truck into the platform did you or Gaughan unload it? A. No.

5262 Q. Who unloaded it? A. Men in the building or on the platform; platform men.

Q. What would Gaughan do? A. Oh, he usually stayed around until about 9.30 and mostly would leave.

Q. Did you have any conversation with him? A. No. He would just tell me——

Mr. Boudin: Objected to.

The Court: The answer is no.

Q. Did he say anything at all? A. No. He just informed me that he was going to leave.

M. Boudin: Objected to. The answer is no.
The Court: Objection sustained.

Q. When the truck would be pulled in and the men on the platform would be unloading it, would you on any occasion have any conversation with him at all? A. No. I usually laid down and took a nap or a walk.

Q. Yes, but apart from what you did yourself, before Gaughan would leave, would there be any words between you at all? A. Except that he would just tell me that he was going to leave. 5264

Mr. Boudin: Objected to.
The Court: Strike out the answer. The question is whether there would be any conversation at all of any character. Now you can say yes or no.
The Witness: Yes.

Q. What was said?

Mr. Boudin: That is objected to.
The Court: Overruled.
Mr. Boudin: Exception.
The Court: You may answer.

5265

A. He just informed me that he was leaving.
Q. Anything else? A. No.
Q. No talk about working on the truck? A. No.
Q. Neither of you did any work on the truck at that place? A. No.

The Court: What do you mean by "neither of you"?

Q. Neither Gaughan nor yourself. A. That is right.

Q. Where would you go when the truck was unloaded at that place? A. I would go back to Jersey; back to Bridgeton.

Q. You drove the truck back to Bridgeton? A. Yes.

Q. Would you see Gaughan again on that day? A. No.

Q. Did anyone else ever unload your truck in New York City? A. Yes.

Q. Was that before or after you met Gaughan? A. Before.

Q. At what place? A. Well, I couldn't remember that. There were so many different stops I wouldn't know just
5267 exactly what place it was.

Q. Do you remember approximately how many other persons unloaded your truck? A. I would say five or six.

Q. In what year was that? A. 1937.

Q. Did you pay them any money? A. I paid them by check. I would write out a check——

Mr. Boudin: I object to that. There is no question pending.

Q. And you handed them a check? A. Yes.

Q. For how much? A. $9.42.

Mr. Boudin: That is objected to as immaterial.

The Court: Sustained.

5268 Mr. Boudin: Also on the ground that it is not the best evidence.

The Court: It has already been sustained.

Q. Did any of those men ever give you anything? A. No, sir.

Mr. Ennis: I request this to be marked a Government's exhibit for identification.

The Court: Mark it.

(Marked Government's Exhibit 61 for Identification.)

Q. I show you Government's Exhibit 61 for Identification. Have you seen that paper before? A. I have.

Q. When did you first see it? A. When it was handed to me by this man.

The Court: What man?

Q. What man? A. I don't know how you pronounce it. Peter Waskiewicz or something like that.

Q. Did you see the man who handed it to you write that name on it? A. Yes, sir. 5270

Q. Did that man on that occasion unload your truck? A. Yes.

Q. Did you give him anything? A. I paid him cash, I think. I am not positive. Sometimes I paid cash and other times we paid by check.

Q. Did you see that particular man more than once? A. I couldn't recall that.

Q. Did you ever see him in the presence of Gaughan?

Mr. Boudin: I object to that as leading.

The Court: He may answer yes or no.

Mr. Boudin: Exception.

A. No. 5271

Q. Can you fix the time of that occasion?

The Court: What occasion?

Q. When that man gave you this slip of paper? A. Before November of 1937.

Q. Was it in that year? A. Before November of 1937, yes.

Q. Do you recall any occasion in June when you saw Gaughan? A. No.

Q. Did you at any time see Gaughan unload trucks other than your own employer's? A. Yes.

Q. When? A. Different times. I couldn't——

Q. Well, could you give us the year? A. 1937 and 1938.

Q. Did you see him unload the trucks of anyone else in the year 1937? A. Yes.

Q. Where? A. I couldn't say as to where.

Q. Well, was it in New York City? A. Yes.

Q. Do you know whose trucks? A. Yes.

Q. Whose? A. John Palmer.

5273 Q. On an occasion when you saw Gaughan unloading a Palmer truck, did you see this piece of paper on that occasion (indicating)? A. No.

Q. You did not? A. No.

Q. Would you know the man who gave you this piece of paper if you saw him in this court room? A. No, I don't think I would.

Q. You only saw him once? A. Yes.

Mr. Ennis: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Did your concern do work for Palmer? A. Yes.

5274 Q. What kind of work did you do for Palmer? A. Hauled glass bottles.

Q. You have testified, have you not, that Gaughan unloaded some of Palmer's trucks, is that right? A. That is right.

Q. Do you know when that was? A. 1937 and 1938.

Q. Was your concern doing work for Palmer at that time? A. Yes.

Q. All through 1937, was it? A. Yes.

Q. And 1938 also, up to June 1st of 1938? A. Yes.

Q. Can you fix the date when you first saw Gaughan? A. In November of 1937.

Q. Will you repeat the conversation, if you please, which you had with Gaughan at that time? A. He asked me if I had a City man on the truck, and I told him no. He told me I would have to have a City man before I could unload. So he went ahead and helped me to unload it.

Q. That was the substance of the conversation, was it? A. Yes.

Q. Where did you unload that load? A. Whitall Tatum warehouse.

Q. Will you repeat your answer, please? 5276

The Court: Whitall Tatum warehouse.

Mr. Murray: Thank you.

Q. Did Gaughan help you to unload? A. Yes.

Q. And after that did you communicate with your employer? A. No.

Q. Did you get in touch with him at all after that concerning the unloading of this truck on November, 1937? A. I returned to the garage.

Q. When you made subsequent deliveries to New York and you met Gaughan, did you meet him by appointment? A. No.

Q. Did your employer tell you where to meet him? A. Yes. 5277

Q. And on each occasion when you came into New York on subsequent deliveries, each time you met Gaughan, did you meet him at a place where your employer told you to meet him? A. Yes.

Mr. Murray: That is all.

Mr. Ennis: No redirect.

The Court: Excused.

(Witness excused.)

Mr. Ennis: I will call Salvatore Fontana.

SALVATORE FONTANA, residing at 422 Martin Avenue, Maple Shade, New Jersey, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What was your occupation at the beginning of 1937? A. Driving a truck.

Q. For whom? A. Harold G. Cline, Incorporated.

Q. Were you a member of any union at that time? A. Yes, I was. Local 590 in Vineland, New Jersey.

5279 Q. Did you drive trucks into New York City for Cline? A. Yes, I did.

Q. What kind of merchandise did you haul? A. Dyestuffs.

Q. Dyestuffs? A. Yes.

Q. At the beginning of 1937 did you unload your own trucks? A. Well, we did for a while.

Q. In 1937? A. Yes, that is right.

Q. Well, did a time come when you did not unload your own trucks? A. Yes, it did.

Q. When was that? A. Around February of 1937.

Q. Do you know who did unload your trucks? A. No, I don't.

Q. Well, on the first occasion when someone unloaded your trucks where were you taking the merchandise? A.

5280 We took it all over New York City.

Q. Well, did——

By the Court.

Q. Well, do you remember the first time that someone other than yourself unloaded your truck? A. Yes.

Q. And do you know where that happened? A. On West Street.

Q. And had you ever seen before the person who unloaded your truck at that time? A. No, I never seen him before.

Q. Well, did you ever see him afterwards? A. Yes, I seen him once afterwards.

Q. Did that person unload your truck more than once? A. I can't remember who unloaded the truck the first time.

Q. Well, is there any occasion after the first time when your truck was unloaded by someone other than yourself whom you remember? A. Well, there is only one fellow that I really know now, that is working for us now.

By Mr. Ennis. 5282

Q. When did he first unload your truck? A. I can't remember just when he started unloading.

By the Court.

Q. How long ago? A. About three years ago.

Q. What is his name? A. George Bagley.

By Mr. Ennis.

Q. Will you stand up and look around and tell us if you see him here. A. (Standing) Yes, there he is over there (indicating).

Q. Where is he? A. In the second row. 5283

Q. Which one from the left end? A. Fourth.

Mr. Ennis: May the clerk call the name of George Bagley?

The Court: Yes.

The Clerk: George Bagley.

(A man stood up.)

Q. Before Bagley helped unload your trucks, did other persons help unload them? A. Yes, they did.

Q. Did one person help unload your trucks on more than one occasion? A. Yes, they did.

Q. Well, do you recall any person who helped unload your trucks on more than one occasion? A. I only knowed the fellow by "Reds". That is all I knew him by.

Q. Did you know him by some name? A. Reds is all.

Q. Reds? A. Reds.

Q. How many times did you see him? A. I couldn't say how many times I seen him.

Q. I didn't hear that. A. I couldn't say how many
5285 times I seen him.

Q. Well, could you give an approximate number? A. A few times, I guess.

By the Court.

Q. Was that before you ever saw Bagley? A. I would not say before. It was all about the same time, I guess. They were all there together.

By Mr. Ennis.

Q. Did you see them together, the man you call Reds and Bagley; did you ever see them together? A. Yes, they were at the DuPont Warehouse together.

5286 Q. Now, will you stand up and look around the court room and tell us if you see this man you call Reds. A. Sitting in the last row, fifth from the left.

Q. Fifth from the left? A. Yes.

Mr. Ennis: May the clerk call the name of Leonard La Marne?

The Court: Yes.

The Clerk: Leonard La Marne.

(A man stood up.)

Q. Is that the man? A. That is the man.

Q. You may take your seat again. Now, in addition to those two persons was there anyone else whom you know by any name who unloaded your trucks? A. Yes, quite a few, but I never knowed them by name.

Q. You never knew any other one by name? A. No.

Q. Did any of this number unload your truck more than once? A. I can't recall just now. George Bagley is about the only one I know that has been there.

Q. But apart from the two persons whom you pointed out, did you see anyone else who unloaded your truck—did you see him more than once? A. Yes, I have.

Q. On your truck? A. Yes. 5288

Q. In 1937? A. Oh, I won't say it was exactly that year or not.

Q. Well, did you see any other person around the time you saw these two? A. There were four or five of them there which I could not remember them all.

Q. And did you see these other persons who unloaded your truck in the presence of the two you pointed out? A. No, I don't see any there now.

The Court: The stenographer will repeat the question. You listen to it.

Q. (Read.) A. I don't remember whether any of them were there then or not.

Q. Well, Mr. Fontana, will you stand and look around 5289
the room again and tell us if you see anyone else who unloaded your truck. A. (Standing) No, I don't see any of them there now that has ever worked with me since I have been driving here.

Mr. Ennis: May this be marked as a Government's exhibit for identification?

The Court: Yes.

(Marked Government's Exhibit 62 for Identification.)

Q. Mr. Fontana, will you look at the face of Government's Exhibit 62 for Identification. Do you believe you saw the person that that picture represents? A. No, I would not say.

Q. You would not say that you have seen that person? A. No.

Q. Do you recall any occasion in which you drove your truck back to Jersey with the load you had brought to
5291 New York? A. Yes, in 1937, the first time I was stopped.

Mr. Boudin: I move to strike out the answer beginning with "the first time."

The Court: Motion granted.

Q. Where did you bring that merchandise in New York City? A. To Walker Freight on West Street.

Q. Did you unload it there? A. Yes, I finally unloaded it there.

Q. Did you unload it there on that day? A. Not the day we went back to Jersey, no.

Q. Did you talk to anyone at Walker Freight?

The Court: Yes or no.

5292

A. No.

Q. You talked to no one? A. No.

Q. Did you see any of the persons you have pointed out here there on that day? A. I can't remember just who was there that day, the first day.

Q. Well, did you see any persons there? A. Well, I wasn't stopped at Walker Freight exactly——

Mr. Boudin: I move to strike it out.

The Court: Strike it out. Listen to the question, Mr. Fontana. The stenographer will read it.

Q. (Read.) A. No, I did not.

Q. In driving into the city that day what road did you take into the city? A. West Street.

Q. Did you come over the ferry or through the tunnel? A. Through the ferry.

By the Court.

Q. What ferry? A. Central Ferry.

Q. Liberty Street? A. Liberty Street, yes. 5294

By Mr. Ennis.

Q. Did you talk to anyone before you arrived at the warehouse? A. No, I did not.

By the Court:

Q. Did anybody talk to you? A. No.

Q. Before you arrived at the warehouse? A. No, they did not.

By Mr. Ennis.

Q. Did you make any stop before you arrived at the warehouse? A. No, I did not.

Q. Now, when you did arrive at the warehouse you did not unload the freight; is that correct? A. Yes. 5295

Q. What did you do with it? A. I started for Walker Freight where the freight went and I was stopped on West Street by two men.

Q. Well, do you know who those two men were? A. Well, one fellow I know; this Reds here is the only one I can remember.

Q. The man you call Reds was the only one? A. That is right.

Q. Were you driving along on West Street when you first saw them? A. Yes, I was.

Q. Did Reds say anything to you? A. He just told me I had to have——

Mr. Boudin: One moment. I object to that.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Will you answer, please. A. They told me I had to have 807 men up there to unload the trucks; and I told him
5297 I had to call the boss up before I could do anything.

Q. What did you do? A. Well, I pulled around by the warehouse where two other trucks was at, and I called the boss up, and he told us that——

Q. Not what he told you. You made a telephone call? A. That is right.

Q. Now, after you made that telephone call did you have any conversation with Reds? A. No, I did not.

Q. What did you do? A. Just sat there and waited until I got word from the boss as to what to do.

Q. Well, after you heard from the boss what did you do? A. Stayed at the warehouse until that night when we went back to Jersey.

Q. You went back to Jersey that night? A. That is
5298 right.

Q. Where did you go in Jersey? A. Avenel.

Q. Did you unload the freight there? A. No, I didn't.

Q. What did you do with the freight? A. Brought the freight back to New York the next morning.

Q. Where did you bring it? A. At the warehouse.

Q. Was it unloaded that day? A. Yes, it was.

Q. Who unloaded it? A. A fellow went with me and unloaded it.

Q. A person went with you? A. Yes, one of the men that are over here went with me and unloaded it.

Q. Was it the man you call Reds? A. I can't remember who went with me the first day.

Q. Where did you pick up the man, or where did you meet the man who unloaded your freight that day? A. At the warehouse.

Q. Did you give him anything? A. No, I didn't.

Q. Was anyone present except you and that man on that day? A. There was two or three of them around there, I guess.

Q. With him? A. Yes.

Q. Do you know the names of any of them? A. No, I don't. 5300

Q. Did they show you anything? A. No, they didn't show me nothing.

Q. Did you see anything on their clothing? A. No.

Q. Did you see any of them with either Bagley or the man you call Reds? A. Did I see them?

Q. Did you ever at any time see any of those men you saw on that day with Bagley or Reds? A. I can't remember just who was there that day.

Q. But one of those men unloaded your truck? A. That is right.

Mr. Ennis: That is all.

Mr. Murray: No questions.

(Witness excused.) 5301

Mr. Cahill: If your Honor please, I should like to inform the Court that two of my assistants in this case are ill, Mr. Marks and Mr. Burling, and in the light of the fact that on Mr. Marks' part of the case we would not be able to fill out the court day, I thought I should tell your Honor at this time.

The Court: Well, I am very sorry for their illness and their absence. We will just have to do the best we can. We cannot avoid people becoming ill.

Mr. Cahill: Well, I hope they will be back tomorrow, Mr. Marks, at least.

The Court: Well, I shan't be here tomorrow afternoon.

Mr. Cahill: Well, this is our last witness for the day whom we are now calling.

The Court: All right.

ALLEN ZANE, residing at Mullica Hill, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

5303

Direct examination by Mr. Ennis.

Q. Mr. Zane, what was your occupation at the beginning of 1937? A. Chauffeur.

Q. For whom? A. Harold G. Cline.

Q. Did you drive trucks into New York for him? A. Yes, sir.

Q. What kind of merchandise did you haul? A. Well, I hauled mostly dyes and chemicals.

Q. At the beginning of 1937 who unloaded your trucks in New York City? A. At the beginning we did.

Q. Who are "we"? Who do you mean by "we"? A. Well, the drivers theirselves.

5304 Q. Did a time come when other persons unloaded your trucks? A. Yes.

Q. When? A. That was in February.

Q. Do you know the names of any other persons who unloaded your trucks? A. Yes, we had two men.

Q. Who were they? A. Red La Marne and George Bagley.

Q. Did those men work on your trucks several times? A. Yes.

Q. Will you stand and look around the court room and tell the Court and jury if you see those two men here. A. (Standing) Yes, I see them here.

Q. Where are they? A. Right there (indicating).

Q. Which row? A. The second row.

Q. Which one from the left end? A. Fourth man.

Mr. Ennis: May the clerk call the name of George Bagley?

The Court: Yes.

The Clerk: George Bagley.

(A man stood up.)

5306

Q. Is that the man? A. Yes.

Q. Now do you see the other man? A. He is in the back row (indicating).

Q. In the back row? A. Yes.

Q. Which one from the left end? A. Fifth man.

Mr. Ennis: May the clerk call the name of Leonard La Marne?

The Court: Yes.

The Clerk: Leonard La Marne.

(A man stood up.)

Q. Is that the man? A. Yes, sir.

Q. When did you first see La Marne? A. The first time they stopped us.

5307

Mr. Maguire: I move that that be stricken out.

The Court: Strike it out.

Q. What month was it? A. In February.

Q. Do you recall where you first saw him at that time? A. We was down in Washington Street.

Q. Do you recall what merchandise you had at that time? A. Dye. We had dye.

Q. Where were you bringing it to? A. Bringing it to 398 Washington Street. That is the DuPont Warehouse.

Q. DuPont Warehouse? A. Yes.

Q. Was anyone with La Marne on that occasion? A. There was several of them there but I don't just know their names.

Q. Did you have any conversation with them? A. Only just to say don't unload the truck——

Mr. Boudin: I object to the answer and move to strike it out.

The Court: Strike it out. The answer is yes or no. Did you have any conversation?

5309 The Witness: Yes.

Q. What was said?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

By the Court.

Q. Who was the conversation with? A. With La Marne.

Q. Well, what did he say to you and what did you say to him? A. He told us we had to put a City man on the truck.

5310 *By Mr. Ennis.*

Q. What did you say to that? A. I said we had to get in touch with the boss.

Q. Were you a member of a union at that time? A. Yes, sir.

Q. What union? A. Local 590, Vineland, New Jersey.

Q. What did you do then? A. Why, the other fellow who was with me, he got in touch with our boss at Penns Grove, New Jersey.

By the Court.

Q. Who was with you? A. Fontana.

By Mr. Ennis.

Q. Well, then what did you do? A. Well, we stayed there then.

Q. You stayed there? A. Yes.

Q. How long did you stay there? A. Well. I stayed there till the afternoon; then we went back to Jersey.

Q. Did you unload the trucks in New Jersey? A. No, sir.

Q. What did you do? A. We stayed in Jersey overnight and came back the following day. 5312

Q. Did you unload the trucks the following day? A. No, not until the afternoon.

Q. Who unloaded them? A. Well, La Marne and several other fellows. I don't know their names.

Q. Did you give them anything? A. Pay them, you mean?

Q. Did you pay them anything? A. No, sir.

Q. Did you have any conversation with them when the trucks were being unloaded? A. No, sir. They just unloaded them; that is all.

Q. On this second day what time did you go back to the warehouse in New York? A. We came to the warehouse in the morning.

Q. What time were your trucks unloaded? A. We started to unload them in the afternoon. 5313

Q. Well, was La Marne or any of these other men there? Did they come there? A. Yes, they came there in the afternoon.

Q. What time? A. Well, in the afternoon. I don't know just what time.

Q. At what time did you start to unload the trucks in the afternoon? A. Well, it was after 12 o'clock, but I don't know just what time it was now.

Q. What time did you finish? A. We finished that night around five.

Q. Now, during that afternoon did you have any conversation with La Marne or any of those men?

Mr. Boudin: I think that has been answered, if your Honor please.

The Court: I will allow it.

Mr. Boudin: Exception.

The Court: Yes or no.

The Witness: No.

The Court: How many trucks were there?

The Witness: Four or five.

5315 The Court: Were they all trucks of your employer?

The Witness: Yes, sir.

Q. Did anyone who was there with La Marne say anything to you? A. Not as I remember.

Mr. Ennis: I request this to be marked a Government's exhibit for identification.

(Marked Government's Exhibit 63 for Identification.)

Q. I request you to examine Government's Exhibit 63 for Identification, particularly the lower part. Will you
5316 please read that? A. (Witness looks at paper.)

Q. Have you read it all? A. Yes, sir.

Q. Is that your signature on the bottom of that page? A. Yes.

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Did that refresh your recollection concerning that second day at the warehouse? A. Yes, sir.

Q. In addition to what you have told us, did any of the men who were there with La Marne say anything?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. They was all talking there when we was all there.

Mr. Boudin: The question calls for yes or no.
The Court: Strike it out.

5318

Q. Did any of those men there with La Marne say anything? Yes or no. A. I don't know what you mean.

Q. The answer is yes or no to the question. Did any of the men there that day with La Marne say anything which you heard? A. They was talking about unloading the trucks.

Q. What did you hear them say?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

By the Court.

Q. Who said what? A. Well, they said they would have to unload all the trucks. 5319

Q. Who said that? A. They all said it; all of them.

Q. Did they sing it in chorus? A. No, sir.

Q. Did each man say it separately or did they all say it together? You know, we are trying to get a picture here of what happened. We want you to paint it in words. How was this said? Did several people say it all at one time? A. No, sir.

Q. Did you say anything to anybody? A. Yes, sir.

Q. What did you say? A. Well, they was talking about having the trucks unloaded there.

Q. What did you say? A. What do you mean by what I said?

Q. Well, did you say anything at all? A. They said they would unload the trucks, and we got in touch with the boss and they unloaded them.

Q. Well, who did the talking among these men that you say were there? Was there any spokesman? A. Yes. La Marne done some of the talking.

Q. Well, do you remember anything he said? A. Yes.
5321 I remember he said that we had to put city men on to unload the trucks.

Q. Now, was this the first day or the second day? A. The second day.

By Mr. Ennis.

Q. Now, Mr. Zane, in addition to what La Marne said, did any of the men with him say anything in addition to what you have told us? A. (No answer.)

Q. Was anything said about the trucks? A. You mean—they said they would unload them, yes.

Q. Was anything else said about the trucks? A. Well, they just said they would just have to unload them.

Q. Will you please look at Government's Exhibit 63
5322 for Identification again, the lower half of it?

The Court: Read it to yourself and after you have read it see whether it refreshes your recollection in any particular.

(Witness looks at paper.)

Q. Have you finished reading it? A. Yes.

By the Court.

Q. Does it refresh your recollection as to anything that happened or anything that was said? A. Well, they said—

Q. No. Just answer the question. Does it refresh your recollection, yes or no? Does the paper you just read refresh your recollection? A. I remember some, yes, sir.

Q. Now, to the extent that the paper refreshes your recollection are you now able to state what conversation or any part of it you had on that occasion with any one of those men who were with La Marne? A. They said they would have to unload the trucks or they would have to do something to him. 5324

By Mr. Ennis.

Q. Did they say what?

Mr. Boudin: I object to that.

The Court: Sustained. Have you told us all of the conversation that you had?

The Witness: Well, they said that they would tear him up.

Mr. Boudin: I move to strike out the answer.

The Court: Objection sustained. Strike out the answer. The answer is yes. What additional did they say? You have a right to press your objection, but it doesn't get anywhere, and we are living in 5325 an age where we travel by airplanes instead of horses and buggies. Go ahead and answer the question.

Q. What did they say?

The Court: Was anything else said? If so, what was it?

The Witness: No, not anything else was said besides that.

The Court: Besides what? Besides what?

The Witness: They said they would have to unload the trucks or else tear him up.

Mr. Ennis: That is all.

Mr. Murray: May I see this exhibit, if your Honor please?

The Court: Certainly.

(Paper handed to Mr. Murray.)

Cross-examination by Mr. Murray.

5327 Q. Now, do you know who said they would tear him up? A. I can't remember.

Q. You don't know who said that? A. No. There was a whole bunch there. I don't know just what ones.

Q. Well, after you went back to Jersey on the first occasion that you met La Marne did you see your boss, Mr. Cline? A. On the first day I went back to Jersey?

Q. Yes. A. No. I seen him the following day.

Q. Well, did you see him the next morning? A. No, sir.

Q. Did you see him before you returned to New York on the second day? A. No, sir.

Q. Did you get in touch with him? A. On the first day, yes, sir.

Q. On the second day did you talk to him at all? A.
5328 Not until the afternoon.

Q. Did you pay these men anything? A. No, sir.

Q. What kind of merchandise did you truck? A. We hauled dye and chemical.

Q. Were they in cartons or barrels? A. Well, it comes in cartons; it comes in drums and barrels.

Q. Some of them are as much as 500 pounds? A. Yes, sir.

Q. Or more? A. Yes.

Q. How many men did it usually require to get one of those drums off your truck? A. It is all according to where you went.

Q. I mean when you started to unload. A. Two.

Q. How much would a barrel weigh? A. It is all according to what size of barrel.

Q. Take the largest sized barrel. What would that weigh? A. 500.

Q. How many men would it take to get a 500-pound barrel off? A. Well, if he was putting it right down on the ground—or putting it on the platform, one man could do it; if he was putting it on the ground, two men would do it.

5330

Q. Did your concern truck for the DuPont Products? A. Yes.

Q. Did you truck for anybody else besides DuPont? A. No.

Q. How large a truck did you have? A. I had a tractor and trailer.

Q. How many tons did you ordinarily carry on the tractor or trailer? A. Ten.

Q. Not more than ten on any occasion? A. Very seldom, with the size truck I had.

Mr. Murray: That is all.

By the Court.

5331

Q. At this place on Washington Street did you make a delivery on a platform or on the ground? A. At Washington Street it is a platform.

Q. Is that platform about level with the— A. No, sir.

Q. —with your truck? A. No, sir.

Q. Is it higher or lower? A. The truck is higher than the platform.

Q. How much? A. About a foot.

Q. Did you carry skids with you? A. Well, no, not there we didn't.

Mr. Ennis: No redirect.

Mr. Boudin: I move to strike out that portion of the witness' testimony in which unknown persons are alleged to have made this remark.

The Court: I will deny the motion. I think it is a question of what weight the jury will give to it.

Mr. Murray: The exhibit for identification marked 63 was shown to this witness for the purpose of attempting to refresh his recollection. I find that——

5333 Mr. Cahill: I will ask that there be no statement made about the contents of the exhibit. It is still marked for identification.

Mr. Murray: Have I said anything about it?

Mr. Cahill: I anticipated it.

Mr. Murray: Well, you are wrong.

The Court: You mean he is not a good anticipator.

Mr. Murray: Yes.

(Paper referred to handed to Court.)

Mr. Murray: I see that there are questions and answers on the paper.

The Court: Yes.

Mr. Murray: I would like to inquire who the

5334 questioner was.

The Court: You may ask him if he knows.

By Mr. Murray.

Q. Who asked you—withdrawn.

By the Court.

Q. Who was present when you were asked some questions and signed your name to a paper that was shown

to you here and is indicated as Exhibit 63 for Identification? A. Who was present?

Q. Yes. A. That man, Mr. What-you-call-him.

Q. Which one? A. The man with the glasses.

Q. There are two men with glasses. The one in the middle or on the end? A. The one in the middle.

Q. Mr. Ennis? A. Yes.

Mr. Murray: Thank you, your Honor. No further questions.

Mr. Ennis: No redirect.

The Court: Witness excused. There are no more witnesses. The jury will be excused until tomorrow morning at half-past ten. 5336

(Adjourned to May 8, 1940, 10.30 A. M.)

New York, May 8, 1940,
10.30 A. M.

(TRIAL RESUMED.)

The Court: Has the roll been called?

The Clerk: Yes, your Honor. All but Samuel and Morris Reichler are present.

The Court: Mr. Murray, do you desire to examine Mr. Byrnes? 5337

Mr. Murray: Yes, your Honor.

The Court: Well, have him come in.

(At this point the defendants Morris and Samuel Reichler entered the court room.)

The Clerk: All present now, your Honor.

The Court: All right. Proceed.

5338 *Raymond A. Byrnes—For Government—Recalled—Cross.*

RAYMOND A. BYRNES resumed the stand and further testified as follows:

Cross-examination (continued) by Mr. Murray.

Q. Mr. Byrnes, when you first discussed a contract with Local 807 with Mr. Dillon, you had a conversation with him at that time, didn't you? A. Yes.

Q. Did you? A. Yes.

Q. And did you tell him that you had a contract with 590 and that 590 claimed that the contract was good any place in the United States? A. Yes.

5339 Q. And did you say to him, "Why do I have to sign any more?" A. Yes.

Q. Now, this conversation was when? A. It was some time in March, 1937.

Q. When did you have the conversation? March, 1937? A. March, 1937, yes.

Q. When did you sign the contract with Local 807? A. May 19th.

Q. Now will you produce the contract that you had in the month of March with Local 590? A. In 1935?

Q. 1937, in the month of March, when you had this conversation in which you stated to Dillon, "Why should I sign a contract when I have one with Local 590?" A. I had an oral contract with them.

Q. Whom did you have the oral contract with? A. With

5340 the delegate from 590.

Q. What is his name? A. Mangone.

Q. What is his first name? A. Joseph.

Q. Did you ever have any written contracts with Local 590? A. Written contracts? Yes, but not in 1937.

Q. When did you have written contracts with 590? A. I think the first one was in 1938.

Q. So did you have a written contract with 590 in 1936? A. I had a previous contract, yes.

Q. Did you have a written contract with 590 in 1936? A. I am not positive. I know I first signed up with them in 1935.

Q. Now, Mr. Byrnes, when you left here the other day you went in search of your records, particularly in regard to contracts that you claimed you had with 590; isn't that correct? A. That is right.

Q. Now will you produce any contract that you had with 590 in 1937, particularly in the month of March? A. Well, I could not find them and I called Local 590 and they said I signed my first contract in 1935 and gave me a copy of the first contract I signed.

Q. Did you have a written contract in 1937 at any time? 5342
A. No. They said not; I had an oral contract.

Q. Well, don't you know whether or not you had a contract? A. I remember making arrangements with them about the wage scale.

Q. Don't you know whether you had a written contract in 1937? A. Well, I couldn't remember because I had so many contracts handed to me and I know I had an oral contract with them.

Q. And you do know, don't you, that you told this jury last Monday that you had a contract with 590 in 1937, don't you? A. Yes, I am pretty sure.

Q. Now I ask you again, will you produce a contract? A. I couldn't; I had an oral contract.

Q. Well, was it the procedure in dealing with Local 590 to have an oral contract? A. Well, at times, yes. 5343

Q. Isn't it a fact that in the year 1937, that you did not have a contract with 590 until July? A. I had an oral contract.

Q. Will you look at this paper and see if you can identify the signature on it? A. Yes.

Q. Whose is it? A. Mine.

Mr. Murray: I offer it in evidence, if your Honor please.

The Court: Show it to counsel.

(Mr. Murray hands paper to Government counsel.)

Mr. Cahill: We object to it, if your Honor please, on the ground that it is immaterial.

The Court: Let me see it.

(Paper handed to the Court.)

The Court: Objection overruled.

(Marked Defendants' Exhibit S.)

Mr. Murray: This Exhibit S is a paper that purports to be a contract between the South Jersey
5345 Chauffeurs, Teamsters & Helpers Union, Local 590, of Vineland, New Jersey, and vicinity, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, American Federation of Labor. It is called a produce contract and is dated July 3, 1937.

Q. Now I ask you again, Mr. Byrnes, whether or not the practice in New Jersey was when a shipper such as you had a contract with 590 that it was only an oral contract? A. That one year, yes.

Q. Well, you say now the date of this contract, Exhibit S, is July 3, 1937, do you not? A. Yes, that one is. I signed my first contract in 1935.

Q. If the practice was to have oral contracts, will you
5346 be good enough to tell us the necessity of getting a written contract in July of 1937?

Mr. Cahill: I object to the form as hypothetical.

The Court: I will allow it.

A. Well, they just didn't ask for a signed contract. We made arrangements on the wages per trip.

Q. Well, do you know what situation brought about their requesting a signed contract in July, 1937?

The Court: Well, I will exclude that. There isn't any evidence here that the union requested the contract. I don't know who requested it.

Q. You say on July 3, 1937, there was a signed contract, is that right? A. I don't remember just the date when I did sign the next contract.

Q. Well, it is in evidence? A. Yes.

Q. Exhibit 8? A. Yes.

Q. Did you have any talk with any member of the union or any representative of the union in the month of July, 1937, concerning the signing of a written contract? 5348
A. On produce, yes.

Q. Did you ever sign any other contract with 590 besides a produce contract? A. I don't remember signing any.

Q. Did you have a produce contract in 1935? A. Yes.

The Court: In writing?

The Witness: Well, I have the copy he brought me.

The Court: Well, was it in writing?

The Witness: Yes.

Q. Did you have a produce contract in 1936 in writing? A. 1935 run up to August of 1936. I don't remember the date. The biggest part of 1936 I know we did because 5349
the contract runs for a year.

Q. Will you produce that contract, please? A. I only have a copy of when I signed the first contract.

Q. Where is the original? A. Well, I must have lost it because I lost a brief case out of my car and what contracts I had were in that.

Q. When was that?

The Witness: That was in January of this year.

The Court: Where?

The Witness: Well, I went to Washington and when I came home to get it out of the car it was missing. I had several contracts, including my 1940.

Q. Did you lose that 1937 contract out of your brief case? A. I lost the whole brief case, whatever was in it. Produce and whatever was in it. 1940 contract was in there.

5351 Q. Haven't you got the 1937 contract as of July 3? A. No.

Q. Did you bring that to court with you? A. July 3rd of what year?

Q. 1937. A. The produce?

Q. Any contract at all of July 3, 1937. A. No.

Q. Have you got it? A. No.

The Court: Well, as I understand it, Exhibit 8 in evidence, you produced that?

Mr. Murray: Yes, your Honor.

Q. You say now that you have no written contract as of July 3, 1937? A. I will look at the dates (witness refers to papers). Yes, I did have a produce.

5352 Q. You didn't lose that out of the brief case, did you? A. No. I found that at home.

Q. Have you got a 1938 contract with you? A. No, I don't. The next is 1939.

Q. Have you got 1939? A. Yes.

Q. Was that in the brief case that you lost? A. No. I found that with these others.

Q. Did you have a 1940 contract? A. That was in the brief case because I didn't have it very long. He told me yesterday he would give me another copy of it.

Q. Isn't it a fact that you had no contract of any sort whatever before July 3 of 1937? A. Well, I have produced a copy of the one I signed in 1935.

Q. You know that the 1935 contract does not apply to 1937, don't you? A. Sure enough.

The Court: Well, now, just a moment. You asked the witness if it wasn't a fact that he didn't sign any contract. He says he produced a copy of the 1935 contract. Now you want to know whether he knows if the 1935 contract doesn't apply to 1937.

Mr. Murray: Well——

The Court: I don't agree, Mr. Murray, that that 5354
was a proper question. The contract is here. Its production and comparison will disclose that, and then if it is produced, if there is anything in one and not in the other, you can examine about that.

Q. Well, have you got a contract as of 1935? A. I got the copy of the first one I signed. I couldn't find the other one.

The Court: Where did you get the copy?

The Witness: I called Local 590. They brought it to us yesterday.

The Court: Since you were here last Monday?

The Witness: Yes.

5355

Q. What became of the original of the 1935? A. I couldn't say. I couldn't find it. The local must have it.

Q. Well, when you asked them for it you say they sent you a copy? A. Yes, of the first one I signed, the day and date.

Q. Did you ask them for the original? A. No. I just asked them for a copy of it.

Q. Does your signature appear on the copy? A. No.

Mr. Cahill: I object to the question.

The Court: Sustained.

Q. Have you got any contract that you signed with Local 590 between 1935 or 1936 and July 3, 1937?

The Court: Well, are you including 1935 or do you mean between 1935 and 1937?

Mr. Murray: Yes, your Honor.

A. I have one July 3, 1937.

The Court: Have you any contract or paper
5357 bearing an earlier date after 1935 than July 3, 1937?

The Witness: No.

Q. Did your produce contract with 590 cover the shipping of canned goods? A. It did for a while, but I forget what date they changed and made up two separate contracts, one for produce and one for canned goods.

Q. Well, did the produce contract before July, 1937, with 590 include the shipping of canned goods? A. Yes, it did for a while, but I couldn't tell you for how long.

Q. Was that in 1937? A. It was before 1937.

Q. When were the contracts changed? A. I couldn't remember the exact date because I don't know. It has been quite a while ago.

5358 Q. Now, was it a man named Mangone that you telephoned to yesterday in Local 590? A. No.

Q. Who was it? A. Edward Deer.

Q. D-a-r-e? A. D-e-e-r.

Q. And when did you talk to him yesterday, what time? A. About 1 o'clock, I would say.

Q. Was that yesterday? A. Yes, sir.

Q. And did you see Mr. Deer yesterday? A. Yes, sir.

Q. And was it he that brought you the copy of the contract of 1935? A. Yes, sir.

Q. Where was it that he brought the contract to?. A. Sir?

Q. Where was it that he brought the contract to after you phoned? A. To my residence in Mullica Hill.

Q. Beg pardon? A. To my residence in Mullica Hill.

Q. That was at 1 o'clock? A. Right around one. I had just had lunch.

Q. Now, Mr. Byrnes, do you recollect that you testified on Monday that all of your drivers in New York in March of 1937 were members of Local 590? A. All New York drivers, yes.

Q. Did you have a driver named James Hemsley? A. Yes, I am pretty sure he was driving at that time. 5360

Q. Was he driving to New York? A. Yes.

Q. Was he a member of the union in March of 1937? A. He had a button.

Q. Don't you know it to be a fact that he did not join the union until June 7, 1937? A. Well, he claimed he belonged and I know he did after that because we paid the dues and gave him his book and button.

Q. When did you pay the dues for Hemsley? A. We started in June paying all the dues, just checked it off for the month, check-off system.

Q. You mean that before June of 1937 the chauffeurs paid their own dues? A. That is right.

Q. And that after that date, that your concern paid the dues? A. Yes, sir; we deducted it from their salaries.

Q. Did you have a driver named Daniel Wilson driving 5361 your trucks to New York in March, April or May of 1937? A. Yes.

Q. Did he belong to Local 590 at that time? A. As far as I knew he was supposed to.

Q. Do you know that he joined the union in June of 1937? A. Some of the drivers was in and out. They had buttons and I could not tell you just when he did join or take up his book, but they were all supposed to belong. I know they had belonged.

Q. Did you have a driver named Cooper who came to New York with your trucks between March and June of 1937? A. Yes.

Q. Did he belong to the union at that time? A. Most of them—most all of them joined in around 1935.

Q. Well, I am asking you now particularly about Cooper. A. I think he did.

Q. Did you know that he joined in June of 1937? A. I know we paid his dues in June. I don't know when he joined after that.

Q. Did you have a driver named Hood that came to New York between those dates, March and June? Did
5363 you have a driver named Oscar Hood? A. I couldn't say whether he drove at that time or not. He is not with us. He has not been with us for several years.

Q. Did you have a driver named Harry Russo? A. Yes; he is not with us. I could not say whether he belonged or not.

Q. Do you recollect that on Monday that you testified that a driver named Ross Cavello belonged to the union in March, April and May of 1937? A. He joined in 1935.

Q. Did he belong to the union in March, April or May of 1937? A. He was supposed to, because I know he joined in 1935, the spring of 1935.

Q. Do you know that he did not join until June of 1937? A. No; I do not know that, because I seen his book in 1935.

5364 Q. Did you see his book in 1937? A. No, I did not.

Q. Now, do I understand you, Mr. Byrnes, to say that your concern did not begin to pay the dues for the members of 590 until June, 1937? A. That is right.

Q. Never before? A. Not that I remember, unless we loaned them the money or something.

Q. Now, when was the last occasion that you talked to Dillon? A. In July of 1937.

Q. Will you fix the date? A. The 7th.

Q. And you met Dillon in March of 1937, is that correct? A. That is right.

Q. And is it correct that between March of 1937 and July of 1937 that you met him on a number of occasions? A. Several times, yes.

Q. And you talked to him? A. Yes.

Q. Did Dillon on any of those occasions say to you in substance that you had not paid him or the other men in full for their work? A. Yes, for that overtime.

Q. And on one occasion did Dillon go to your place in New Jersey? A. Yes.

Q. Did you have a conversation with Dillon at that time about whether or not you owed him and the other drivers any money? A. Yes. 5366

Q. Did you present a loaded pistol at his body on that occasion? A. I did not.

Q. Where did Dillon talk to you? A. In our office.

Q. Who was present besides Dillon and yourself? A. Bandazzo.

Q. Anybody else? A. Mr. Parks.

Q. Who is Mr. Parks? A. He works for me in the office.

Q. Is he still working there? A. Yes.

Q. Isn't it a fact that on that occasion that you told Dillon that if he did not get out of the State of New Jersey you would blow his brains out? A. I did not, because I took them home, or I took them to Camden.

Q. Didn't you say in substance that you owned New Jersey? A. I did not. 5367

Q. And that the chauffeurs might own New York? A. I did not.

Q. There was no such conversation, is that correct? A. No, sir, there was not; no such thing.

Q. When was the last time before July of 1937 that you had any talk with Dillon or concerning owing him or anyone else money for services performed? A. I really don't know the date. It was several times. I could not fix the date that far back.

Q. Did you make an appointment to meet Dillon in New York in July of 1937? A. The delegate in Vineland did; I didn't.

Q. What was his name? A. Mangone.

Q. Beg pardon? A. Joseph Mangone.

Q. Do you know whether or not he is still a delegate for 590? A. He is not.

Q. Then did you come to New York with Mangone? A. Yes.

Q. Anybody else with you? A. No.

Q. And on the way to New York did Mangone tell you that he had an appointment to meet Dillon? A. Yes, before we left.

5369

Q. Did he tell you where the appointment was or the placed called for meeting Dillon? A. It was on Greenwich Street; Greenwich and Jay.

Q. Was it in a house? A. No; it was on a corner.

Q. Was there a diner there? A. No.

Q. Was there any structure that you can remember now there at that time? A. I just don't remember. I think it was a restaurant, tap room or something.

Q. Then did you meet Dillon? A. Yes.

Q. Was there anyone present besides Dillon, Mangone and yourself? A. Yes, there was another man; I don't know what his name was.

Q. Well, did that man accompany you and Mangone or did he accompany Dillon? A. No; we met him there on the

5370 corner.

Q. Then did you go into the restaurant and sit down? A. Yes.

Q. And you had a talk, did you? A. That is right.

Q. About the question as to whether or not you owed money to Dillon? A. I did not owe Dillon at that time.

Q. You didn't owe Dillon at that time? A. Not that date.

Q. I didn't quite understand you. A. I had squared up with Dillon. I didn't owe Dillon at that time.

The Court: He says he didn't owe Dillon at that time.

Mr. Murray: Oh.

Q. Was your purpose in coming to New York to discuss with Dillon whether or not you did owe him anything? A. No. It was to discuss the way he was unloading the trucks.

Q. Was that your only purpose in coming to New York? A. That is all. The delegate down there said he would try and get it straightened out so there would not be no overtime, and such things like that. Our local tried to help us out.

5372

Q. When you sat down and discussed the matter in this restaurant, did Dillon tell you that under the contract you made with Local 807 that you were obligated to pay overtime? Yes, he did.

Q. What did you say? A. Well, I told him I didn't want any overtime; when the time was up, to get off the truck.

Q. Well, did Dillon speak to you at that time, at that meeting, and submit to you what he claimed was figures showing the overtime that he and some other members of Local 807 had worked on your trucks? A. No, he did not.

Q. Was there any discussion about that feature? A. There was a discussion about the way they had been holding up the trucks and the time they had been putting on them and the overtime that he had been charging me.

5373

Q. Well, was overtime discussed between you or among you? A. Not that I owed him, no. I didn't owe him any overtime at that time.

Q. Did Dillon claim you owed him overtime? A. No. Not at that date.

Q. Was there anything discussed about overtime at that meeting, Mr. Byrnes? A. Not that I can remember, because I didn't owe him any overtime.

Q. Were you asked these questions on Monday and did you make these answers on page 1945 of the record?

Mr. Murray: I will go back, if your Honor please, so the context will be clear.

Q. (Continued) Were you asked this question and did you make this answer——

The Court: What page now?

Mr. Murray: 1944.

Q. Were you asked this question and did you make this
5375 answer: "Q. Subsequent to that time did you have any further conversations with Dillon in New York City?" and did you make this answer: "No, I think that is the last we had until the 7th of July." Do you recollect that? A. What date was that? For what date?

Q. Do you recollect being asked that question and making that answer when you testified here in court last Monday?

Mr. Cahill: If your Honor please, I will object on the ground that it is not clear from the question what time is referred to subsequent to that time.

The Court: Well, if it is not, the witness can say.

A. It is not clear to me what time he means.

5376

Mr. Murray: If your Honor please, I do not see the time precisely fixed here, and that is why I went back——.

Mr. Cahill: I agree with you it is not fixed.

The Court: As I understand it, you went back of what you originally intended to read so that the context would be clear, and you begin with a question which makes it all look like muddy water.

Mr. Murray: That is true, but the only date I find here is July 7th and that is why I went back to that question and answer.

The Court: May I look at it?

Mr. Murray: Yes (handing minutes to the Court).

The Court: Mr. Murray, I call your attention to the question where I have made the mark on the same page. I think that is the date.

Mr. Murray: Well, I shall skip the rest of it.

The Court: Well, you are conducting the examination, but I am trying to indicate that we start somewhere so the witness picks up the context of what his previous examination may have been. 5378

Q. Well, were you asked this question and did you make this answer: "Q. On this occasion in Swedesboro when you had this talk about overtime did you say anything to Dillon and the others about your tractors going back downtown instead of using the 23rd Street ferry? A. Yes, I did."

By the Court.

Q. Do you remember that question and that answer? A. Yes.

By Mr. Murray. 5379

Q. Now, let me ask you, after that conversation and before July 7, 1937, did you have any further conversations with Dillon? A. I don't remember any, no.

Q. Now, on July 7th did you have——

The Court: Do you mean further conversation on that day, or conversation between that day and July 7th?

Q. Any conversations whatever between this occasion when you talked with him about going back downtown instead of using the 23rd Street ferry—was that the last time you talked with him? A. I don't remember.

Q. I mean before July 7th of 1937. A. I could not say.

The Court: Speak a little louder, Mr. Byrnes; I don't hear you.

The Witness: I could not say; I don't remember the date.

Q. Now, on July 7, 1937, you testified that you had a conversation with him? A. Yes.

5381 Q. That Mangone was present at the time? A. Yes.

Q. And someone else whom you don't know? A. Yes.

Q. And was that conversation at Greenwich and Jay Streets? A. Greenwich and Jay Street, yes.

Q. You have told us, as I understand it, you had no talk about overtime at all on that occasion? A. No, I don't remember any at that time.

Q. And what was your conversation? A. I just don't remember what we did talk about. It might have been overtime; it might have been the holidays.

Q. Well, were you asked this question, and did you make this answer——

The Court: Last Monday?

5382 Mr. Murray: Last Monday, on page 1945 of the record.

Q. "Q. Was anyone with Dillon? A. I don't think there was. There might have been somewhere around there, but I just don't recall." Did you make that answer? A. Yes.

Q. "Q. Did you have a conversation with him? A. Yes." Were you asked that question and did you make that answer? A. Conversation with Dillon?

Q. Yes. A. Yes.

Q. "Q. What was said? A. Well, we got into an argument over overtime again and he said he had another job in view and if I would give him $100 he would get off the job and let Randazzo take it." A. Right.

Q. Did you make that answer to that question? A. Yes.

Q. On Monday? A. Yes.

Mr. Murray: That is all.

The Court: That conversation took place on this occasion at Greenwich and Jay Streets?

The Witness: Yes.

The Court: Is that when it occurred?

The Witness: Yes. 5384

The Court: Redirect?

Redirect examination by Mr. Ennis.

Q. Mr. Byrnes, have you with you a copy of the contract that you got from Local 590 yesterday? A. Yes, sir.

Q. May I have that? A. (Witness hands paper to counsel.)

Q. Now, before you talked to anyone in 590 did you look through all your papers? A. Yes.

Q. At home? A. Yes.

Q. And did you bring with you all the written contracts you could find? A. Yes.

Q. Who gave you this copy of the contract? A. Edward Deer. 5385

Q. Who is he? A. He is secretary and treasurer of 590.

Mr. Ennis: I request it to be marked for identification.

The Court: Well, I think you had better have him produce all the papers that he brought here today and have them marked for identification as one exhibit.

Mr. Ennis: All right.

(Witness hands papers to counsel.)

Mr. Ennis: Pardon me, your Honor, a moment, while I run through them here.

(Marked Government's Exhibits 64-A to 64-J, inclusive, for Identification.)

Mr. Ennis: I offer Government's Exhibit 64-A for Identification in evidence (handing to defense counsel).

Mr. Murray: If your Honor please, I object on the ground that it is secondary evidence when primary could have been produced by this witness.

5387 The Court: Well, I will overrule the objection and receive the document not as evidence of the contract but as indicating what the witness produced here in response to the request that was made that he produce whatever records he had. He says the original that he had he can't find. He says that he obtained this from the secretary of the local out there and the witness had no power, so far as I know, to bring the original here, but it can be produced here if anybody wants it on either side by proper process.

Mr. Murray: I respectfully except, if your Honor please.

Mr. Ennis: May I show this to the jury?

5388 The Court: After it is marked.

(Government's Exhibit 64-A for Identification received in evidence.)

The Court: The jury will understand that this is not accepted as a true copy of the original contract, but it is accepted as a paper which this witness says was given to him by the secretary and treasurer of Local 590 and it is produced by him in

lieu of the original which he states he does not have in his possession, and for the purpose of indicating the extent to which he has endeavored to comply with the directions under which he returned here this morning.

(Mr. Ennis hands exhibit to jury.)

By Mr. Ennis.

Q. Mr. Byrnes, subsequent to 1935, did you have contracts with 590?

Mr. Boudin: I object to that as calling for a conclusion, if your Honor please. 5390

The Court: I will sustain the objection.

Q. Did you pay your drivers the scale of wages required by Local 590?

Mr. Maguire: Objected to.

A. Yes.

The Court: Sustained. Strike out the answer.

Q. Did you pay your drivers by any such scale of wages?

Mr. Maguire: Objected to.

The Court: Sustained. 5391

Q. When did you begin to pay the union dues, as you said? A. In April.

Q. Of all your drivers?

Mr. Boudin: I object. He has already testified.

The Court: He has already testified that he began to pay that in June, 1937.

Mr. Ennis: That was preliminary to having the witness explain how it came about.

The Court: You don't have to ask him the same question over again to explain something. Before you undertook to pay the dues, as you have testified you did do in 1937, did you have a talk with anybody?

The Witness: I had a talk with the secretary of the Union 590.

Q. Did you take the amount of dues that you paid out of the men's wages? A. Yes. In 1937. In June.

Q. You took it out of their wages? A. Yes.

5393 Q. Is that what you meant by the checkoff system? A. That is right. When they came to collect the dues——

Mr. Maguire: I move that it be stricken out.

The Court: Yes. Strike it out.

Q. How often did you pay these dues?

Mr. Boudin: That is objected to as immaterial.

The Court: I will allow it.

Mr. Boudin: Exception.

A. Once a month.

The Court: Where?

The Witness: They came to our office and we

5394 gave them a check for it.

Mr. Boudin: If your Honor please, I move to strike out the answer as not responsive.

The Court: Strike out after "they came to our office." Who came to your office?

The Witness: The secretary of 590 would come up once a month and bring the books, stamps and buttons. Then we would pay him the dues for what men were employed by us.

Q. How would you pay him? In what form? A. Checks.

Q. Would it be after that that you charged it against the men's wages? A. That is right.

Q. Do you know how the dues were paid before that time?

Mr. Boudin: That I object to, if your Honor please.

The Court: I will allow him to say whether he knows or not.

A. Yes, I do.

Q. Did you see any of your drivers pay the secretary anything before that time? A. Yes. 5396

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

Q. What did you see any driver give the secretary? A. Well, the secretary would come up and collect $2 a month dues.

Q. Directly from the drivers? A. Yes.

Mr. Cahill: May I have a moment, if your Honor please?

The Court: Yes.

By the Court. 5397

Q. When the secretary came up before June, 1937, did he always come at the same hour? A. No; he would come at the end of the month for what drivers he couldn't locate——

Q. No, That is all. I asked you if he always came at the same hour. A. No, sir.

Q. Would the drivers always be there at the same hour? A. No.

Mr. Ennis: That is all, your Honor.
The Court: Anything further?
Mr. Murray: No further questions.
The Court: Excused.
(Witness excused.)
The Court: Next witness.

ROSS CAVALLO of 137 Academy Street, Glassboro, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

5399 *Direct examination by Mr. Ennis.*

Q. What was your occupation in the beginning of 1937? A. Truck driver.

Q. For whom? A. For R. A. Byrnes, Inc.

Q. Did you drive trucks into New York City? A. I did.

Q. In the beginning of 1937 who unloaded the merchandise you drove into New York City? A. My helper and I.

Q. Did a time come when you did not unload your own merchandise yourself? A. Yes, when we had to hire the 807 fellows.

Q. When did that first occur? A. That was in 1937.

Q. Do you remember the date or the month? A. The date I don't exactly remember.

5400 Q. Do you remember the month or the time of the year? A. Early in the spring.

Q. Do you remember the first occasion on which you didn't unload your own truck in New York? A. Yes. That was in 1937.

Q. In the spring? A. Yes.

Q. Do you recall what merchandise you had on your truck on that occasion? A. Canned goods.

Q. To whom was it consigned? A. To someone in New York City. It has been quite a while back. I can't remember now.

Q. How did you come into New York City? Over the ferry or through the tunnel. A. Over the ferry.

Q. Do you recall what day of the week it was? A. On a Monday.

Q. On a Monday? A. Yes, Monday morning.

Q. What time of the day did you arrive in the city? A. I generally arrived around seven; between half-past six and seven o'clock. Sometimes a little before.

Q. Did you see any other trucks of your employer in the city on that morning? A. Yes.

Q. Where? A. On the corner of 11 and 24th Street, at the Munson Diner.

Q. Was your truck there too? A. Yes. 5402

Q. How many trucks of your employer were there? A. Seven, I think, that day.

Q. Did you talk to anyone there that day about unloading your truck? A. Why, I asked if we were going to unload and they said——

The Court: No. Strike it out. The question was whether you talked with anybody.

The Witness: Yes.

Q. With whom did you speak? A. To Dillon.

Q. Do you know the rest of his name or any other name? A. Bob Dillon.

Q. Anyone else? A. Not that day. Just Bob Dillon that morning. 5403

Q. Was there anyone with him whom you know on that occasion? A. Yes. Randazzo. Bernie Randazzo.

Q. Anybody else? A. A colored fellow by the name of Carl.

Q. Did you see Dillon and Randazzo on subsequent occasions? A. Yes.

Q. Would you know them if you saw them now? A. Well, I haven't seen them for quite a while. I guess I can recognize them.

Q. Well, will you stand and look around this room and tell the Court and jury if you see them here. A. (Standing.)

Q. You can step down if you can't see everyone from there. A. Right over in that corner.

Q. On which seat? A. On the bench, the first seat.

Q. Which man on the bench? A. The first man.

Q. By what name do you know him? A. Bob Dillon.

Mr. Ennis: May the clerk call the name of Robert Dillon?

The Clerk: Robert Dillon.

(A man stood up.)

5405

Q. Is that the man? A. That is the man.

Q. Do you see the other man you spoke of? A. Yes. The third man over there from the first seat—on the same seat; Bernie Randazzo.

Mr. Ennis: May the clerk call the name of Bernard Randazzo.

The Clerk: Bernard Randazzo.

(A man stood up.)

Q. Is that the man? A. Yes.

Q. Will you take your seat again. Did you have a conversation with Dillon on that occasion? A. Yes. I asked him when he was going to unload it.

5406

Mr. Boudin: I move to strike out everything after "Yes."

The Court: Strike it out. What conversation did you have?

Mr. Murray: Your Honor, may I have the time fixed, if you please?

The Court: Yes.

By the Court.

Q. Can you tell us what month and year this was? A. In June, I think.

Q. Did I understand you to say that it was on a Monday morning? A. Yes, sir.

Q. A Monday in June? A. Yes. I am pretty sure it was in June.

Q. Now, can you be any more specific than that to say what part of the month of June it was? A. That I don't remember.

Q. What time of the morning was it? A. It was early in the morning. The minute and the time I couldn't remember. 5408

Q. Well, do you mean it was nearer sunrise or nearer noontime? A. Yes, nearer sunrise.

Q. Where did this conversation take place? A. On the corner of 11th and 24th Street, the Munson Diner.

Q. On the street or in the diner? A. Some out in the street and some in the diner.

Q. Well, what did Dillon say to you and what did Dillon say to him?

Mr. Boudin: That is objected to.

The Court: Overruled—well, I will withdraw the question and allow counsel to ask it.

Mr. Boudin: It doesn't make any difference. That is not the point. 5409

The Court: Maybe the objection is good because I asked it.

Mr. Boudin: No, no.

The Court: Well, I will withdraw it.

By Mr. Ennis.

Q. What was your conversation with Dillon on this occasion?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Well, it is unilateral. I will overrule the objection. You are only asking for one side of it.

Mr. Ennis: Yes, your Honor. I didn't mean to.

Q. What did you say to Dillon and what did he say to you on that occasion?

Mr. Boudin: Same objection.

The Court: Overruled.

Mr. Boudin: Exception.

5411

A. All right?

Q. Yes. Will you tell us what was said. A. I asked him if he was going to unload it. He said when the boss came up and paid the money, "Why, then we will unload you." I said, "What money?" He said, "Overtime." I kept on asking him, but it didn't do any good; we had to pay them—until the broker came and paid the money.

Mr. Maguire: I move to strike out the latter part.

The Court: Strike it out. It is not part of the conversation.

5412 Q. When was your truck unloaded?

The Court: Strike out the words "until the broker came and paid the money."

A. It was on a Wednesday morning.

Q. Wednesday morning? A. I think it was on a Wednesday. About two or three days we were in the city that time—that week before we got unloaded.

Q. Did you see your employer there any time that day? A. Not that day; not the first day I didn't because he was away.

Q. Were you there at the diner and that place the next day? A. Yes, I was at the diner the next day.

The Court: What day was that?

The Witness: That was on a Tuesday.

Q. Did you see Dillon on that occasion? A. Yes.

Q. Did you see Randazzo on that occasion? A. Yes.

Q. Did you have a conversation with either one of them? A. No, because we were waiting until they got straightened out. 5414

Mr. Boudin: I object.

The Court: The answer is "No." Strike out after "No."

Q. When did you next come to New York City?

The Court: Well, now, wait a minute. Are you through with that occasion?

Mr. Ennis: Yes, I am through with that occasion.

The Court: Was any part of your merchandise unloaded on Monday?

The Witness: No, sir.

5415

By the Court.

Q. Was any part of your merchandise unloaded on Tuesday? A. No, sir.

Q. Where were you on Wednesday? A. That is when we got unloaded. The broker came down and paid the fine.

The Court: No, no. Strike that out.

5416

Q. Where were you on Wednesday? A. Down at the Munson Diner.

Q. Was you truck unloaded on Wednesday? A. Yes.

By Mr. Ennis.

Q. After that time did you have any conversation with Dillon in New York City about unloading your truck? A. You mean after that?

Q. After that occasion, yes. A. Well, we had another tie up, what they call it, about two months later.

Mr. Maguire: I move to strike it out.

5417 The Court: Strike it out.

Q. Did you have a talk with Dillon in New York City after that first occasion? A. Yes.

Q. Did you have a truckload of merchandise in the city on that occasion? A. I did.

By the Court.

Q. When was that? A. That was about two months later.

Q. Well, what month? A. Around July.

By Mr. Ennis.

5418 Q. Where were you in New York City? Where did you have that conversation? A. In front of the Munson Diner, 11th and 24th Street.

Q. Who was present besides yourself and Dillon? A. Randazzo and Carl and a bunch of other fellows. I don't know their names.

Q. What was the conversation?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was the conversation with Dillon? A. Well, I pulled up there and told him I had a load for R. C. Williams and I pulled up in front of R. C. Wiliams and waited until they opened the door, and I backed in. So after I backed in to start to unload, I waited for the man to come over to help me unload, and this Carl, the colored fellow, came over and said, "Bob Dillon wants to see you at the diner." I said, "What does he want to see me for? You are here to help unload." He said, "He wants to see you at the diner. I don't know what he wants." He said, "I will take care of your truck." So I goes down to the diner and while I went to the diner to see Bob Dillon, why, this colored fellow pulls the trucks out—— 5420

Mr. Boudin: One moment. That is objected to.

A. (Continued) —this colored fellow pulls the trucks out——

The Court: Wait. Read the last part of the answer.

(Last portion of answer read.)

By the Court.

5421

Q. You went down to the diner? A. I went to the diner.

The Court: Strike out after that.

Q. Now, when you got over to the diner did you see anybody? A. I went to see Bob Dillon.

Q. Well, did you see him? A. Yes.

Q. Now, at the time you went over to the diner to see Bob Dillon did you observe whether anything happened to your truck? A. I heard a truck coming in. I looked at it and it was my truck. This colored fellow pulled it out of R. C. Williams and brought it around there.

Q. Brought it around where? A. In front of the Munson Diner.

Q. And where were you when he brought the truck around? A. In the diner.

By Mr. Ennis.

Q. Who was with him? A. With the truck or Dillon?

5423 Q. With Dillon at the diner. A. Well, he had a bunch of fellows around there.

Q. Anyone you know? A. Randazzo was there with him and Frank Downs.

Q. He was there on that occasion? A. Yes, he was there on that occasion.

Q. Anyone else you know? A. Well, there are lots of others. I don't remember who all they were.

Q. Well, have you seen Frank Downs subsequent to that time? A. Since then?

Q. Yes. A. Yes.

Q. Will you stand and look around the room and tell us if you see him here. And step down if you can't see from over there. A. (Stepping down from stand) Fourth

5424 one from the end.

Mr. Ennis: Will the clerk call the name of Frank Downs.

The Clerk: Frank Downs.

(A man stood up.)

Q. Is that the man? A. Yes.

The Court: We will take a recess at this time. (Short recess.)

The Court: We will take a recess at 1 o'clock for the day, and I think I may say to the jury that it appears to the Court now that the presentation of the case on behalf of the Government will finish at least tomorrow morning, so that there will be a short day for you tomorrow, because after the Government has put in its case there will be motions to be argued which are not of the immediate concern of the jury, and you will be excused during that period of time. I say that now so that you may be free to consider at least what you will do with your time tomorrow to your own advantage, as well as this afternoon. 5426

By Mr. Ennis.

Q. Mr. Cavallo, what was your conversation with Dillon at the diner on that occasion?

Mr. Boudin: We press the objection, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. Well, he said he would not unload it until Mr. Byrnes came up and paid the overtime. 5427

Q. What did you say? A. I said, "I have the money here in my pockets to pay for these four loads." He said, "That don't go."

Q. Were there four truckloads in New York that day? A. Yes, we had four truckloads.

Q. Did you have the money to pay the men for unloading those trucks? A. I did. I had it in my pocket.

Q. Did you have some conversation with Dillon about that money? A. Yes. He said that didn't go because it was overtime——

Q. Overtime for— A. (Continued) —and he would not touch another truck until that overtime was paid.

Q. Overtime for former trucks? A. That I didn't know. All he told me was overtime.

Q. Was it about those loads that were there that day? A. No.

Q. What else was said? A. Well, that is all was said at the time until a truck come up that had poultry on it, and he was——

5429 Q. Well, on another occasion, you mean? A. On the same day.

Q. Well, at the time of this conversation did Dillon say anything? A. Not till that night.

Q. Well, did you have another truck, an additional truck, there that night? A. Yes. That had produce and poultry.

Q. Where did you see that truck? A. At Eleventh and 24th, at the Munson Diner.

Q. At the Munson Diner? A. Yes. Some of the 807 men brought it there.

Q. Was Dillon there then? A. Yes.

By the Court.

5430 Q. What time was that? A. Well, some time in the afternoon.

Q. How long was that after this conversation you have just related? A. Oh, two or three hours.

By Mr. Ennis.

Q. Were your four trucks unloaded at that time? A. No.

By the Court.

Q. Was this one of Mr. Byrnes' trucks that came there in the afternoon with poultry? A. Yes.

By Mr. Ennis.

Q. Who was present in addition to yourself and Dillon? A. Oh, a bunch of the 807 fellows.

Q. Anybody you know? A. Oh, Randazzo, he was there; Carl and a bunch of the other fellows; I didn't know the other guys, but there was a bunch of them there.

Q. Did you have any conversation with Dillon at that time? A. Well, he held the truck, and I told the truck 5432
driver to go ahead and unload this poultry——

Mr. Boudin: I move to strike it out.

The Court: Strike it out. The question was whether you had a conversation, not what somebody did.

The Witness: Yes. We had the conversation about that truck.

Q. What did you say and what did Dillon say?

Mr. Boudin: That is objected to, if your Honor please?

The Court: Overruled.

Mr. Boudin: Exception. 5433

A. I said, "The poultry truck ain't got nothing to do with these four trucks." Then he made the poultry truck go on and told the poultry truck to come back. If the poultry truck didn't come back I would not have come back either.

Q. What did you say to Dillon? A. Well, we did not say no more until evening, and then when the truck did not

come back, he said, "I want the money for the day's wages for the truck that delivered the poultry." I said, "Oh, no, you ain't going to get that money"——

The Court: Oh, no, no.

By the Court.

Q. Do you know where this poultry truck was to unload? A. All over the city, at different hotels.

Q. All right. Was the poultry dead or alive? A. It was dead.

5435 Q. Now, when the poultry truck came to this diner or near the diner where you were, at 24th Street and Eleventh Avenue, did you hear Mr. Dillon say anything to the driver of the poultry truck? A. Yes. He told the driver to be sure and be back there as soon as he got his poultry off; that he couldn't go back until this overtime question was settled.

Q. Did anybody get on the poultry truck with the driver when the poultry truck went away? A. No.

Q. Now, did you see the poultry truck again that day? A. No, I didn't.

Q. It didn't come back there? A. No, sir, it didn't come back there.

Q. How long did you remain there? A. I remained there two or three days.

5436 Q. No— A. That time?

Q. Yes. A. All that evening.

Q. Up to what time? A. Up to about 4 o'clock somewhere around that time.

Q. In the afternoon? A. Yes.

Q. Now, before you left there at 4 o'clock in the afternoon, did you have any further conversation with Dillon about the poultry truck? A. Yes. He wanted the money for the poultry truck.

Q. What did he say? A. He says, "Come on. Pay up for a day's wages for that poultry truck."

Q. What did you say? A. I says, "Well, nobody went with the poultry truck and there ain't supposed to be no City man with the poultry truck."

Q. That is what you told him? A. Yes.

Q. What did he say? A. He said, "I want the money and I will get it." I said, "Over my dead body you will get it."

By Mr. Ennis.

Q. Then what was said? A. Then they crowded around me and kind of shoved me down and I fell on the steps of 5438 the diner.

Mr. Boudin: I move to strike it out; that is not responsive to the question.

The Court: Strike it out.

Q. What did Dillon do at that time? A. He was going to get the money out of my pocket.

The Court: No, not what he was going to do. What did he do?

The Witness: Well, that is what he did. He shoved me down the steps and was going to take the money out of my pocket, but I tried to kick him and jerk him. I said, "Over my dead body you will get it," and he didn't get it because I kept on kicking 5439 and finally they let me alone.

Q. Did he have his hand on the money? A. No, he didn't have his hand on the money.

Mr. Boudin: That is objected to.

The Court: Overruled.

The Witness: I kept it in my pocket.

Q. Did he touch you— A. Only ripped my pants. I went home all pinned up. I know that much.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Subsequent to that occasion did you have any conversation about unloading your truck with Randazzo? A. Yes, after that.

Q. Do you remember when? A. That was in 1938.

Q. When in 1938? A. Some time during the summer.

Q. Well, can you state the month? A. I am afraid I can't.

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Q. Is that the nearest approximation of the time you can give? In the summer of 1938? A. Yes.

Q. Do you recall what load you had at that time? A. I had a load for somewheres up in the Bronx.

Q. Was Randazzo on your truck? A. Yes.

Q. Where did he get on your truck?

Mr. Murray: Now, I object, if your Honor please.

A. The corner of Beach and Hudson.

Mr. Murray: I object, if your Honor please, on the ground that the time is not fixed and it may be outside the dates laid in the indictment.

The Court: Well, is it your contention that this

5442

circumstance occurred prior to or after May 31, 1938?

Mr. Ennis: Your Honor, I can't say because the witness' recollection is only in the summer.

The Court: I say, what is your contention? What are you offering it for? Are you offering it as proof of something that happened before the 31st of May, 1938?

Mr. Ennis: As something that may have happened after that date, in the summer.

Mr. Murray: I press the objection.

The Court: If you are offering it as something that happened after May 31, 1938, then I want to ask whether you propose to offer further proof for the purpose of identifying any defendants connected with this case have not been specifically identified up to this time?

Mr. Ennis: May I have just a moment, your Honor?

The Court: Yes.

(Conference among Government counsel.)

5444

Mr. Ennis: I will withdraw the question and not pursue it, your Honor.

The Court: All right.

By Mr. Ennis.

Q. Apart from this incident that you have just spoken of, have you had any conversation with Randazzo in New York City? A. One since then. That was about a month or so later.

Q. A month or so later? A. Yes.

Q. Where was that? A. The corner of Beach and Hudson.

Q. What time of the year 1938 would that be as best as you can fix it? A. Around July.

5445

Q. Where were you and Randazzo? Were you on the truck?

Mr. Bondin: That is objected to.

A. No; he was in the restaurant at the time.

The Court: Overruled.

Mr. Bondin: Exception.

The Witness: He was in the restaurant, and there was two trucks, and one took some canned goods off my truck——

Mr. Boudin: I object.

The Court: No. Strike out after "he was in the restaurant."

Q. Were you in the restaurant? A. I was in the restaurant the first thing in the morning, yes, to get my breakfast.

By the Court.

5447 Q. Well, were you in the restaurant when Randazzo was in the restaurant? A. Yes.

Q. Was there anyone else present? A. Oh, a bunch of the fellows present.

Q. Was there anybody there whom you knew by name? A. No, not by name.

Q. That was in July, 1938? A. Yes.

The Court: Well, how does this differ from the inquiry you made with respect to the matter up in the Bronx?

Mr. Ennis: May I step up, your Honor?

The Court: Yes.

(Conference at bench between the Court and Mr. Ennis off the record.)

5448 Mr. Ennis: That is all for now then, your Honor.

Cross-examination by Mr. Murray.

Q. Now, Mr. Cavallo, this incident about ripping your pants at 24th Street and Eleventh Avenue. Are you certain it was your pants or your trousers? A. Both.

Q. When did you join the union? A. In 1935.

Q. What month in 1935? A. June.

Q. Did you belong to the union in May, 1937? A. I don't remember.

The Court: Well, did you get out of the union after you joined in 1935?

The Witness: Yes. On three different occasions.

The Court: Then you went back in again?

The Witness: Yes.

Q. Did you belong to the union in March of 1937? A. I don't remember.

Q. Did you belong to the union in April of 1937? A. I don't remember that.

Q. Well, were you driving a truck for Byrnes that came 5450
into New York in March of 1937? A. Occasionally, yes.

Q. In April and May of 1937? A. I think I was.

Q. Did you have a union card at that time? A. Our union was kind of broke up down there at the time.

Q. You mean there was no union in Jersey during the months of March, April and May of 1937? A. There was then, yes.

Q. When was the union broken up? A. It wasn't quite organized right.

Q. When wasn't it organized right? A. For quite a while.

Q. Well, when was that? A. That I don't remember.

Q. What year? A. 1935, 1936.

Q. Now, did you join the union in 1935? A. I did. 5451

Q. Were you a member of the union all through the year of 1935? A. That I couldn't say. I don't remember.

Q. When did you join the union in 1935? In what month? A. I don't remember that.

Q. Did you belong to the union in 1936? A. For a while, yes.

Q. When in 1936? A. That I couldn't say, what date—what month, because I mislaid my book and I couldn't find it.

Q. Did you quit the union in 1936? A. I think I did.

Q. When in 1936? A. That I could not remember because it is too far back.

Q. Did you belong to the union in December of 1936? A. I couldn't say, because I don't remember.

Q. Well, his Honor asked you if a time came when you quit the union or you were not a member of the union. Can you fix that time when you quit the union? A. No, I couldn't.

Q. Can you fix the year? A. I think I quit the union once in 1936, but I couldn't remember the date.

Q. When did you rejoin the union, if ever? A. Some time in 1937.

5453 Q. Isn't it a fact that you were not a member of Local 590 in January, February, March, April or May of 1937? A. I couldn't remember that.

Q. Did you join the union in 1937? A. I remember joining the union in 1937, yes.

Q. When? A. Around June some time.

Q. Isn't it a fact that you didn't join the union until June 7, 1937? A. The date I don't remember.

Q. Was it in June? A. Yes.

Q. When did you first meet Dillon? A. That I couldn't remember.

Q. Do you know what month? A. No.

Q. Do you know what year? A. No, I don't remember that.

5454 Q. Was it 1938? A. It was before 1938.

Q. How long before 1938? A. That I couldn't say.

Q. Have you got any idea at all? A. No.

Q. Was it six months or nine months before January, 1937? A. I couldn't say because I don't remember.

Q. What month and what year was it that you met Dillon when you got your pants ripped? A. That was in 1937.

Q. What month? A. Around July.

Q. Was it the first part of July or the latter part? A. The date I couldn't say because I can't remember,

Q. Was it before the 7th of July? A. That I couldn't say because I don't remember.

Q. Well, now, you have testified, have you not, that on that occasion that you were in New York you were here two or three days? A. I was.

Q. Where did you stay in New York? A. Right around the truck.

Q. All day and all night? A. I slept in the truck. I had to.

Mr. Boudin: I move to strike it out.

The Court: Strike out "I had to." 5456

Q. Were you accustomed at any time while you were working for Byrnes to sleep in your truck two or three days and night? A. No.

Q. Did that incident help you to fix the day or date when that occurred? A. No, it don't.

Q. Who drove this poultry truck that you spoke about? A. A colored fellow.

Q. What was his name? A. Birdie Moore.

Q. Was he a member of Local 590, if you know? A. I don't know that.

Q. Do you know a driver named Hemsley? A. Yes.

Q. Was he a member of Local 590 with you in June of 1937?

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Mr. Cahill: Objected to as not within the scope of the direct of this witness.

A. I don't remember.

The Court: I will allow it if you make the witness your own witness.

Q. Do you know whether or not any other drivers for Byrnes were members of Local 590 either in March, April or May of 1937? A. No, I don't.

Q. How many drivers, if you know, did Byrnes have during that period? A. I don't know that, how many he had.

Q. Do you know whether it was more than a dozen? A. I couldn't say.

Q. Do you know the names of any of them? A. Jim Hemsley.

Q. Anyone else? A. Birdie Moore.

Q. Is that all you remember? A. That is all I can remember.

5459 Q. In the spring of 1937 did you meet those drivers every day? A. Not every day, no.

Q. Did you meet them more than once a week? A. Sometimes.

Q. Did you see all of them more than once a week? A. No. You mean Mr. Byrnes' drivers?

Q. Yes. A. No.

Q. Did you all start out from the same place each day to make your deliveries in New York? A. Sometimes.

Q. Well, does that help you to tell me how many drivers Byrnes employed in the spring of 1937? A. No, because I don't remember.

Mr. Murray: That is all.

5460 Mr. Ennis: No further redirect, your Honor, but may the witness be recalled if we wish to bring out anything else?

The Court: Yes. That is all.

(Witness excused.)

WALTER L. LARKIN, residing at 1953 East 34th Street, Brooklyn, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Larkin, what is your position? A. Bookkeeper.

Q. Of what association? A. Truck Drivers Union, Local 807.

Q. That is the International Brotherhood? A. International Brotherhood of Teamsters.

Q. Now, you produced here today, Mr. Larkin, certain records pursuant to subpoena? A. Yes, sir. 5462

Mr. Marks: May I have these marked as one exhibit, your Honor?

The Court: Yes.

Mr. Boudin: If your Honor please, we would like to be heard on the admissibility of this line of testimony.

The Court: Well, I will excuse the jury for the day and I will hear you on that question. Jurors, you are excused until 10.30 tomorrow morning.

(The jury left the court room.)

Mr. Boudin: If your Honor please, it is our contention that the records, books and papers of Local 807 are not admissible against these defendants. I take it that is why the United States Attorney has called for them, to identify the records and have those offered in evidence. We claim that this is in violation of the constitutional provisions against self-incrimination. Your Honor was well aware, under the common law an unincorporated association is nothing but a partnership, an aggregation of individuals. It seems to me that, there- 5463

fore, any records of theirs even though they may be not individual records of each one separately, although these records may contain individual records of each one separately, but quite aside from that, assuming that all of the entries in the books related to their common concerns, they are nevertheless concerns of individuals and therefore are not admissible in evidence under the constitutional provision of self-incrimination. In that respect they are entirely different from the records of a corporation, which is a legal entity, separate entity, created by law or by the state and which the courts have
5465 held is therefore not a person within the provisions of the Constitution in that respect; but clearly that does not apply to an unincorporated association, they being merely an aggregation of individuals.

The law, I think, is well settled in that respect. I cannot refer to particular cases since I was unaware that this matter would come up here today; I did not know until a few minutes ago that there had been such a subpoena issued. But I think it is an elementary proposition, and while it is true that in the federal courts associations may be sued in their, I should say, common name, that is merely a procedural rule, which does not
5466 affect the substantive problem as to the nature of the aggregation being sued; and in this case particularly it is not merely the aggregation that is a defendant, but the individuals as such are defendants; and certainly their records, that is, their common records of all of them together in an unincorporated association which, as I said, is merely a partnership, are not admissible as against them.

Now, if there is any argument on the other side, or if there are any cases I would like to have a

chance to examine them. I am making this argument without——

The Court: I do not think any will be found.

Mr. Boudin: I do not think there are any cases that would allow it, but I won't say that until I see or hear the argument in behalf of the Government.

Mr. Cahill: I think it would be timely at the outset to tell your Honor that all we wish to prove is membership, or the list of members and the date of initiation. So there might possibly be a preliminary question even if your Honor did hold that an unincorporated association did have the benefit 5468
of the privilege, whether in view of limited proof sought to be obtained the privilege would in your Honor's opinion apply.

I cannot cite, your Honor, any cases on the point. Your Honor is very well familiar with unincorporated associations. The questions are clear, and yet there is no law as to whether in this respect an unincorporated association partakes of the nature of a corporation, or does it partake of the nature of individuals? The only help I can possibly give, although we have not completed our research as yet—we have men trying to find some indication in the cases on the point—is that here a large part of the proof has to do with contracts, and 5469
these contracts were signed by the Local 807, and in that important respect at least they were availing themselves—and in this I differ with Mr. Boudin as a matter of terminology; I do not think that an unincorporated association is a partnership in any usual sense of the word. The local has benefited through the use of the entity concept in the signing of contracts about which a great deal of proof in the case revolves, and in that respect it has bene-

fited by its resemblance to the corporate form; and by the evidence here I find that one of the most persuasive elements—but rather than take your Honor's time at this time, I will ask that you give us the rest of the day, and I think we can give your Honor a final answer tomorrow as to whether there is anything in the cases that will be of any help.

Mr. Boudin: If your Honor will permit me before we go to the cases which I hope they may find on the other side—I don't think there will be cases on their side—I would like to suggest merely that the distinction that Mr. Cahill sought to draw militates against his contention rather than for his. I can very well understand that an argument might be made, though in my opinion it would be merely a superficial one, that let us say books of account showing an expenditure, a common expenditure, an expenditure of this entity so called may be admissible, because it is differentiated from the individuals; it has nothing to do with the individual members. Here is an aggregation that apparently is running some kind of a business or engages in some kind of activity, and an expenditure of it might be admissible in a case against it. But here the purpose, as now disclosed by Mr. Cahill, is to show the relationship of the particular individual; in other words, it is the individual's transaction, his record as kept by this same organization; but as relating to him that is sought to be offered in evidence, and I should say, if there is any distinction to be drawn at all on that account, it would be against the admissibility rather than in its favor, because it is not a common expenditure or a common transaction that is sought to be proved, but rather a transaction of this individual, namely, his payment of dues, his applica-

tion for membership, his admission to membership, and so forth and so on. I should say that there hardly could be any plausible argument made on the side of its admissibility. However, if there are cases somewhere we would like to see them, and we would like to say in this connection that if the Government would be good enough to let us know those cases as soon as they have found them, in order that we may have time to be ready for them tomorrow, we should greatly appreciate if we could be advised of them.

Mr. Cahill: We would be delighted to.

The Court: I think they would have to cite to 5474
you principally what has been written by textbook writers and contributors to journals.

Mr. Boudin: That is good enough as far as I am concerned.

The Court: What I am concerned with now, Mr. Cahill, is, if I understand your offer correctly, is it that you propose to show that each one of the individual defendants was at the times mentioned in the indictment a member of 807?

Mr. Cahill: That many of them were. We will not from those records be able to show that all were, but that many were.

The Court: What is your concern about that?

Mr. Cahill: I think, if your Honor please, that 5475
we would not be fatally deprived if we were not able to show it. That is my own opinion.

The Court: I am just wondering what is the necessity of showing that these men are members of the union, so far as they are concerned?

Mr. Cahill: I would be inclined to agree that technically——

The Court: Suppose I hold myself out as a member of the union, and I have no connection with it

whatever, and never did have in my life, but I hold myself out as I was, and by reason of that I secured for myself and some others employment and received the rate of pay that was fixed as the prevailing rate in that community——

Mr. Cahill: Yes, your Honor?

The Court: Now, suppose that in connection with whatever I did I was charged with acts which it was contended brought my activities within the liability of the criminal law; what difference would it make if I were a member of the union or not if I held myself out as one?

5477 Mr. Cahill: I think the argument has great force. I would like to give it further thought; but I must say that it impresses me very, very much.

The Court: Well, of course, I do not want you to be influenced by a suggestion I have made as to whether you should offer proof that you may, from your point of view, think ought to be in this case or not; but what I would like to call to the attention of counsel on both sides is this: There is not any doubt that in the case of a corporation, the officers of a corporation are not immune. They cannot claim any privilege when they are subpoenaed to produce records of the corporation if the proceedings are directed against the corporation. There is not any doubt about that. That

5478 has been held over and over. Now, of course, unions had their origin in the European guilds. Matters were settled over there under statutes so favorable that the question of the quantity of membership never became a factor.

Under the common law here, to sue an unincorporated association you had to sue everybody; that was the law. And when organizations of one kind and another grew to enormous proportions in mem-

bership, something had to be done about it, and the legislatures in various states, and an act of legislation in this state—we have a statute that provides that proceedings may be taken against the president and the secretary or treasurer; and when you serve the president of the unincorporated association you have the whole association before you, except, of course, when a judgment is rendered against the president in that capacity, in order to collect that judgment you have to sue the individuals; but you can sue any or all. There is no fatality such as exists in the case of a partnership where you fail to join all of the members. You 5480
can sue those that you can find within the jurisdiction of the Court to collect your judgment.

It seems to me that the enactment of legislation of that character has created more of an analogy between an unincorporated association and a corporation than theretofore existed when the method of proceeding against the unincorporated association was in accordance with the provisions of the common law.

Mr. Boudin: May I say to your Honor, it so happens that I am familiar with these statutes, and I must say very frankly that for years I have been contending that unions ought to be sued in their common name; and as it happens I have now a 5481
case on appeal in the state court, because I sought to introduce federal practice into the state courts; and I was beaten in the court below, and I am taking it up as a matter of principle.

The Court: What was the method by which they brought the union into that case?

Mr. Boudin: I brought the action.

The Court: How did you bring it? In whose name?

Mr. Boudin: It was an action between two unions, and I sued in the name of the union in its common name against the other union in its common name.

The Court: Well, you could have sued in the name of the president of one against——

Mr. Boudin: No, I deliberately did not.

The Court: I say you could have done it.

Mr. Boudin: Yes, I know I could have done it. I deliberately did not do it, because I favored the federal practice in which you can sue——

The Court: You wanted to carry the federal
5483 practice into the state court?

Mr. Boudin: That is correct.

The Court: And they thought that you were trying to deny them certain state rights.

Mr. Boudin: Now, I want to say to your Honor that the section which is preliminary to a discussion of Section 13 of the general law, association law, to which your Honor referred—your Honor probably has not seen that section for a long time, and I may say that your Honor is somewhat in error as to its provisions.

The Court: Have you read the Haggin case under that section?

Mr. Boudin: No, I do not remember the particular case.

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The Court: Well, I argued the case, and I knew, when I argued that case six or seven years ago, all about the section, and I have had occasion to write several opinions about it since.

Mr. Boudin: Well, I will say to your Honor that the provisions in that section, in my opinion, emphasize the fact that an unincorporated association is regarded as a partnership, and your Honor will recall the provisions of that section.

which specifically states that where the judgment cannot be made good or enforced against a common fund, in a new action against the individuals, the proceedings in the old action cannot even be brought in. In other words, you must forget entirely about it. You do not sue on the judgment recovered in the other action. You must start ab initio as if no such action had ever been had; and the Code is quite specific on the point, that the fact that a judgment had already been recovered is of no materiality, you must start in suing them all. As I understand the section, you cannot sue them; you must sue all of them.

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The Court: It is a very good thing for me, Mr. Boudin, that someone else was my opponent in the litigation that I had, because they did not have the foresight to raise the point that you have, and I collected.

Mr. Boudin: Well, I may say to your Honor, this reminds me, some time ago, about three years ago, I was called in in a case in an injunction suit before Judge Dodd over in Brooklyn, and the very same point was raised. We raised the point that under Section 13 of the General Association Law they could sue only in the name of the president or the treasurer, and they happened to sue both——

5487

The Court: Let me ask a question. Was there anything contested before Judge Liebell when the indictments here were demurred to with respect to the right of the Grand Jury to indict an unincorporated association?

Mr. Boudin: No, if your Honor please, because that has been settled as far as the anti-trust laws are concerned. It has not been settled under the anti-racketeering act, but I did not raise the point because I believe that part of it is correct. You

can indict an association under the anti-trust law, because it has particular reference to associations, and the United States Supreme Court has so held. There is no question about that.

Now, that is not the point that I was raising. We are raising the point that this has nothing to do with the problem of the constituional privilege.

Now, the other thing is a problem of procedure. I think that Congress can pass a law, and even the Court—as the Court has done—has made it, and by mere rules said that you can sue an unincorporated association. Congress has never enacted
5489 any law on that, but in the Coronado case Judge Taft held that certain——

The Court: Well, don't you think that Congress can take judicial notice of the fact that labor unions are not incorporated?

Mr. Boudin: Yes. I say they can be sued, and we are not raising the point of the indictment for that very reason, because I consider that the courts have passed on that; and whether the courts had a right to do it in the absence of a specific statute —I may say that the Court did not do it in the absence of a statute because Judge Taft, in his opinion, has referred to various statutes which he thought gave countenance to the decision. But I
5490 am past that. I am not trying to reopen that. But clearly that has nothing to do with the problems before this Court of the admissibility of records against individuals who are members of an unincorporated association which, under the common law of this state and common law everywhere are merely an aggregation of individuals and not partners. Surely the books of a partnership could not be produced in evidence against them. That is, they could be produced if they obtained them

otherwise, but they could not compel them to produce, which is an entirely different matter. And I think that our contention is, it seems to me—well, nothing is certain in the law, but certain as any point that can be raised in a court.

The Court: Mr. Cahill, when do you think you will be in a position to furnish counsel with whatever you propose to subinit in support of your contention?

Mr. Cahill: Well, Judge, if it is agreeable, let me propose that if we find anything that we think is helpful, we will telephone counsel this afternoon, and if we find anything we will send a memoran- 5492
dum up to your secretary this afternoon, if it is convenient; in any event, we will have whatever we get in final form for you at, say, 10 o'clock in the morning. Is that all right?

The Court: What I am thinking about is, whatever you call to their attention, they ought to have an opportunity to reply to it and I would like to have it all in my hands before 10 o'clock. I would like to have it at least by half-past nine.

Mr. Cahill: All right, Judge, we will have it for you.

The Court: I don't want to receive something a few minutes before I come on the bench and make any snap judgment on it.

Mr. Cahill: I am inclined to agree with your 5493
Honor, although there won't be very much other than textbook writers, as your Honor has said, and possibly some law review articles. I am not too hopeful that we will find any cases.

The Court: Some ten or twelve years ago I went into this question in connection with some litigation then. Of course, there have been amend-

ments and there have been cases since that time, some of which may or may not settle that situation. I don't know.

Mr. Cahill: I think this much, your Honor: I happen to have had several cases under this law, and there is an increasing tendency in the body of the law generally to treat these associations as corporations, as your Honor has pointed out. I think in ever so many different attributes the growth of the law has been that way and the associations have had the benefit of that trend. As your Honor pointed out, you found that out in
5495 Section 13 at the time you were practicing.

In the law of bills and notes, in the Hibbs v. Brown case, it was held that there was sufficient of an entity in a joint stock association, which is the same thing, to make the bills of exchange of the joint stock association and negotiable instruments——

The Court: I think a stock association is a little different.

Mr. Cahill: From the standpoint of a voluntary association law, Judge, yes, there is a slight difference, but I think they have a great many characteristics in common, don't you?

The Court: Well, an unincorporated association
5496 has characteristics in common with a corporation.

Mr. Cahill: True.

The Court: There is a president and usually several vice-presidents and a secretary and treasurer. They pass resolutions and file them with the bank so that they can open and maintain a bank account, and there are other things that they do which are quite in common, and yet there is a very different legal existence.

Mr. Cahill: Well, when Mr. Boudin says, for instance, that he finds in my argument to try to get these applications for admission in that they represent individual records, I point to the contrary of that, that to my way of thinking they pose a collective picture. Now, people trying to get in, individuals trying to get into the group, are akin to people subscribing to stock in a corporation.

The Court: Well, suppose you had here sample writings of various people and you produced certain papers which the defendants were supposed to have signed at some time or other, and you called a person, either a friend or a handwriting expert, 5498
to prove the signatures; that is, to prove that the signatures on those documents that you desired to introduce were in the handwriting of persons who were defendants on trial. What would be the position with respect to their admission as instruments which the defendants claimed were privileged under the Constitution?

Mr. Cahill: Let us see, Judge. I want to be sure I have those facts in mind. An expert is on the stand?

The Court: Yes.

Mr. Cahill: And he identifies from standards that have been put in the disputed writings?

The Court: Undisputed writings. He identifies 5499
the documents which are offered purporting to bear the signatures of persons who were defendants.

Mr. Cahill: Yes.

The Court: And he identifies the handwriting and thereupon the document is offered and the defendants claim that that is a violation of their constitutional privilege.

Mr. Cahill: Oh, I would that that was clearly inapplicable. I don't think that would violate privilege.

The Court: I am only asking you the question. I have my opinion.

Mr. Cahill: I don't know whether my opinion coincides with yours in that respect, but I feel that privilege would not be applicable there, and there may be a point of waiver here.

The Court: The distinction here is that these documents are produced by a representative of the association, of which, at least, it is your contention all the defendants are members.

Mr. Cahill: Yes, sir.

The Court: Therefore the defendants say that
5501 if they are members, then they are being required as members through the witness to make evidence against themselves. That is their contention.

Mr. Cahill: Yes.

The Court: That is the distinction.

Mr. Cahill: Yes, I have that distinction. There may be a point of waiver here. I will check it this afternoon. One of my associates tells me some of these records have been surrendered to the Government and were returned. I will have to examine the record on that and see what there is to it. This privilege may have been waived at the time they were turned over.

The Court: All right.

5502 Mr. Boudin: That doesn't answer the question as to whether an agent would have a right to surrender them, for example, or whether a bookkeeper would have a right to turn them over and waive privilege.

The Court: How about the defendants looking into that?

Mr. Boudin: All right.

The Court: All right. Tomorrow morning at half-past ten.

(Adjourned to May 9, 1940, at 10.30 A. M.)

New York, May 9, 1940,
10.30 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

5504

The Court: Have the defendants' counsel anything they want to submit?

Mr. Boudin: Well, if your Honor please, we have not been served anything by the Government, but we would like to call the Court's attention to the case of Kellogg v. Sowerby, in 32 Misc., affirmed 114 App. Div.

The Court: Have you it there?

Mr. Boudin: Yes, we have that here (handing to Court).

(The Court examines case.)

The Court: Well, of course, the Constitution of the United States provides that no person shall be compelled in any criminal case to be a witness against himself. In the case you have just called to my attention, Kellogg v. Sowerby, reported in the 32nd Volume of Miscellaneous, 5505
at 327, decided in the Supreme Court, Erie County, this State, in August, 1900, Sowerby was a party as president of the Western Elevating Association, one of several defendants, and I suppose the Western Elevating Association was an unincorporated association?

Mr. Boudin: That is correct.

The Court: He was sued in that case as president. So that he was a defendant in that capacity and in that

respect. Now, the United States Supreme Court has since held that regardless of the provisions in the State law with respect to the manner in which you bring an action against an unincorporated association civilly an unincorporated corporation may be indicted as such without the necessity of naming anybody. When the prosecution is directed against the unincorporated association, assuming that it is found guilty, that does not affect the individual members of the association. If there are individual members of the association who are on trial at the same time in the same case, they stand so far as the association is concerned in the position of partners, and any information
5507 that might be adduced from the records of the association and used against the defendants individually would, in my opinion, transgress the provisions of the federal Constitution; but so far as the association itself is concerned, for reasons that I do not need to expatiate on in the presence of the jury, but which I am quite willing to give to counsel privately, it is my determination that no privilege exists, and that I assume to be the point now, because this witness has disclosed that he is here with certain records, and I assume that those records have to do with the association. The proof will develop that, but there is no privilege against the production of those records so far as the association is concerned. But I shall hold that they cannot be introduced as against the individual defendants.

5508 Mr. Boudin: If your Honor will permit me, I understood Mr. Cahill to say yesterday specifically that the intention was to prove certain things against the individual.

The Court: I don't know.

Mr. Boudin: Their membership.

The Court: I will have to determine that question when the proof is offered.

Mr. Boudin: I understand that these are not rulings to which an exception need be taken——

The Court: Well, you better take an exception.

Mr. Boudin: All right, I will take an exception now.

The Court: It won't do any harm if it doesn't do any good.

Mr. Boudin: All right, we will take an exception to your Honor's ruling insofar as your Honor has stated that these are admissible against the association.

The Court: You don't need to repeat it. You can take an exception to the ruling I have made.

Mr. Marks: May we have a moment, your Honor?

The Court: Now, Mr. Cahill, have you any proof to 5510
offer?

Mr. Cahill: Yes, your Honor. Mr. Larkin, please.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

Mr. Marks: I have a group, your Honor. Shall I have them marked as one exhibit?

The Court: I think you had better, and then they can be lettered.

(Marked Government's Exhibits 65-A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, 65-AA, 65-BB and 65-CC for Identification.)

The Court: I want to remind you what I said about this proof being receivable as against the association and 5511
not as against the defendants individually.

Mr. Marks: I have that in mind.

The Court: All right.

WALTER L. LARKIN resumed the stand.

Direct examination (continued) by Mr. Marks.

Q. Mr. Larkin, I show you Government's Exhibit 65-A for Identification and I ask you if that is a record produced from your file? A. It is.

Q. Have you custody of all those records as bookkeeper? A. I have.

Q. Now can you state, by referring to that exhibit, whether or not Joseph Duffy is a member of Local 807?

Mr. Maguire: That is objected to.

5513 The Court: Sustained.

Q. You have also produced here the membership ledgers of Local 807 pursuant to subpoena? A. I have.

Q. Will you please refer to ledger No. 857, Mr. Larkin? Is that the right number? A. Of what year?

Q. Of 1937. A. Yes.

Mr. Marks: May I have the page marked for identification?

The Court: Mark the book for identification Exhibit 66, and mark the page 66-A.

(Marked Government's Exhibits 66 and 66-A for Identification.)

5514

Q. Is Government's Exhibit 66 for Identification another record produced from your files? A. It is.

Mr. Marks: I offer in evidence Exhibit 66-A for identification, confined to that one page.

The Court: Show it to counsel.

(Handed to defendants' attorneys.)

Mr. Boudin: If your Honor please, that is objected to.

The Court: Where is the book? Are you through with it?

Mr. Murray: Would you bear with us for just a moment, if your Honor please?

The Court: Yes, all right. I thought maybe you were doing something else.

Mr. Marks: Does your Honor want to see it?

The Court: Is there an objection?

Mr. Boudin: Yes, your Honor.

The Court: I would like to see it. I cannot rule on it without seeing it.

(Handed to Court.)

The Court: Objection sustained. 5516

Q. Mr. Larkin, are you familiar with the procedure followed in Local 807 with respect to receiving members into the union? A. Yes.

Q. Can you tell us briefly what that procedure was in 1937?

Mr. Boudin: That is objected to as immaterial

The Court: Sustained.

Q. Did the union keep books and records in 1937? A. They did.

Q. Can you tell us what books were kept in that year with respect to members of the union?

5517

Mr. Boudin: That is objected to, if your Honor please.

The Court: Sustained.

Q. Can you tell us whether or not Local 807 kept a record of its membership? A. They did.

Q. What was that record in the year 1937?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Sustained.

Q. Can you tell us whether or not Government's Exhibit 66 for Identification is part of the records kept by the union with respect to membership? A. It is.

Q. Now, were the records kept under your supervision? A. They were.

Q. How were the records kept?

Mr. Boudin: That is objected to.

The Court: Sustained.

5519 Mr. Marks: I renew my offer in evidence at this time.

Mr. Boudin: That I object to.

The Court: Sustained.

Mr. Marks: The offer, your Honor, is only as to the union; not as to any individual defendant.

The Court: Well, I don't see how you can limit it in that respect, because it would appear to me from an inspection of it that it relates to some individual.

Q. Can you tell us whose handwriting appears on Government's Exhibit 66-A for Identification?

5520 Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. The handwriting for the most part is that of my assistant.

Q. What is his name? A. Mr. Franz. F-r-a-n-z.

Q. Can you tell us whether or not any individual members of the union signed any of the membership records

which are known as the ledgers? A. Did the individual members sign the ledgers?

Q. Yes. A. No.

Q. Who actually made the entries in the ledgers? A. Either I or my assistant.

Q. And no one else? A. No.

The Court: It is usually done by somebody connected with the bookkeeping department, I assume. I don't know much about the ledgers, but I always supposed that they were kept by bookkeepers.

Mr. Marks: Well, I wasn't sure of the ground of the objection, your Honor. I thought it might be possible that some defendant had signed his name in this book. 5522

Mr. Boudin: If your Honor please, I might say here that it seems to me that it cannot possibly bear on anything that the union as such has done because the particular name here has not even been mentioned in the course of the trial. So it couldn't be offered on the theory that the person is our agent, the agent of the association.

The Court: Well, there is nothing before me. I have disposed of the question. Let me look at it again.

(Book handed to Court.)

Q. Mr. Larkin, will you look at Government's Exhibits 65-B through 65-CC inclusive for Identification, and tell us whether each one of those papers are documents that you produced from your files? A. They are. 5523

Q. Now will you please refer to ledger No. 8639 for the year 1936? A. (Witness produces book.)

Mr. Marks: Can I have this similarly marked, your Honor.

The Court: Exhibit 67 for Identification. Mark the page 67-A. Does the purpose of this differ in any respect from the purpose as regards to Exhibit 66 for Identification?

Mr. Marks: No, sir.

The Court: What is the purpose of it? What is the object?

Mr. Marks: Mr. Boudin made an observation that the defendant Duffy had not been identified.

The Court: Now just a moment. There hasn't been anything of that kind that I recall.

Mr. Marks: Well, Mr. Boudin did state that, your Honor, and I wasn't sure of the ground on
5525 which your Honor sustained the objection. Therefore I selected another defendant who had been.

The Court: Well, I sustained the objection upon the ground that as I attempted to indicate in the informal ruling that I made, that you might offer proof here with respect to the union but not with respect to the individuals who are on trial; that is the ground upon which I sustained the objection. I can't make myself any plainer than I have.

Mr. Marks: [illegible] is on that theory, your Honor, that we offer these documents.

The Court: What theory?

Mr. Marks: To show who are members of the union during the period of the indictment.

5526 The Court: Go ahead and make your offer. I have already said that insofar as the individuals are concerned they are partners; they are partners and the books belong to them as partners. Have I made that clear? So when you offer the books as against any individual defendant you are offering his property against himself. I don't know how I can make it clearer. I have talked to you in the only language that I have ever learned.

Mr. Marks: In that event, your Honor, the Government has no further questions of this witness.

The Court: Well, that is for you to decide. That is all?

Mr. Boudin: If your Honor please, at this point—well nothing has been offered in evidence; only for identification, I take it.

The Court: It has been offered in evidence, but it has not been received, to be perfectly accurate about it.

Are you through with this witness?

Mr. Cahill: Yes, we are, your Honor.

The Court: I don't mean that this is not susceptible to proof, but not in this way. 5528

Mr. Marks: May I have Mr. Larkin for another question or two?

The Court: Yes.

Mr. Marks: May I have these two papers marked?

(Papers marked Governments' Exhibits 68 and 69 for Identification.)

By Mr. Marks.

Q. Mr. Larkin, are these two papers, Government's Exhibits 68 for Identification and 69 for Identification among those that you produced pursuant to subpoena? A. They are. 5529

Mr. Marks: I offer them in evidence.

Mr. Boudin: They are objected to on the same grounds.

The Court: I would like to look at them.

Mr. Boudin: They are still produced from our possession.

Mr. Marks: May we have the grounds specified, your Honor?

The Court: I will ask for the grounds if I am not clear what it is. If I think I know I will act on it.

Mr. Marks: I think we would like to know, your Honor.

The Court: You may ask Mr. Boudin some time; maybe he will tell you. The objection as to 68 for Identification is overruled and the document will be received in evidence as against the defendant union Local 807 only.

Mr. Boudin: We except to your Honor's ruling and would like to say in addition to the objection
5531 on the grounds heretofore stated that there has been no proper identification. The mere fact that it has been among our papers does not make it competent or admissible in evidence.

The Court: Well, I think you may be right about that. Are you aware which exhibit it is that has been offered?

Mr. Boudin: I think they are offering the Constitution of the International, if I am not mistaken.

The Court: That is right.

Mr. Boudin: Well, that clearly has not been properly authenticated.

The Court: All right, I will withdraw my ruling and sustain the objection, but I will give the United States Attorney an opportunity to bring an officer
5532 here from the International Union.

Mr. Ennis: Yes, sir. We will have the International Vice-president.

Mr. Cahill: May we come up on that issue for just a moment?

The Court: No.

Mr. Cahill: Because it will only inconvenience your Honor. If Mr. Maguire will come up——

The Court: No, I am going to proceed until I take a recess.

Mr. Cahill: All right.

The Court: If you want an opportunity to meet the objection that has been made, I am going to give it to you if I have to adjourn the case for that purpose; and pending that disposition I will reserve decision on Exhibit 69 for Identification.

Mr. Boudin: If your Honor please, we will withdraw that particular ground of objection, the second ground of objection as to its authentication.

The Court: All right, it will be received.

Mr. Boudin: Exception. 5534

The Court: Now I am talking about Exhibit 68, the International Constitution.

Mr. Boudin: Yes, the International Constitution.

The Court: I am not talking about the local: I am talking about the International.

Mr. Boudin: Yes.

(Government's Exhibit 68 for Identification received in evidence.)

Mr. Marks: Do I understand, your Honor, that there is an objection to 69 for Identification?

The Court: Let us dispose of Exhibit 68 first.

Mr. Marks: I have handed both of them to counsel. 5535

Mr. Murray: I have not seen it.

The Court: Mr. Marks, I have allowed Exhibit 68 in evidence. Now will you please tell the jury what it is so that they can follow this case?

Mr. Marks: Very well, your Honor, I will do it separately then.

The Court: That is the way to do it. Take your exhibits one at a time and finish with one before you start on another.

Mr. Marks: Exhibit 68, ladies and gentlemen, is the constitution and by-laws of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America. There are no specific provisions of this——

The Court: What is the jurisdiction of the International?

Mr. Marks: I do not follow that question, your Honor.

The Court: Well, where is the International? What country is it in and what territory does it extend over? What does it do? What is its object and what are its purposes? Has it got anything to 5537 do with chauffeurs and teamsters?

Mr. Marks: I was about to say that there was no specific provision of this that I wish to call to the attention of the jury at the present time. If your Honor so desires it I can call it to the attention of the jury at this time.

The Court: I do not desire it, but I think in the proper order of procedure here, it is a good thing, if you think something is worthwhile putting in evidence, to tell the jury what it is so that they can follow the case.

Mr. Marks: On page four of this exhibit under the heading "Jurisdiction," Section 3:

"This organization has jurisdiction over all the 5538 teamsters and helpers, chauffeurs and helpers, stablemen and all who are employed on horses, harness, carriages or automobiles in and around stables or garages, other than mechanics.

"Dairy employes are classified as helpers and are eligible for membership."

The Court: Is there any provision in there for the institution of subordinate locals? What I

would like to know, for my own information, is how, if at all, the defendant local No. 807 may have any relation at all to the organization whose constitution you have just put in evidence.

Well, you can take that up during recess and give the jury a brief resume of it when you come back.

Now about 69 for Identification.

Mr. Boudin: That is objected to, if your Honor please.

The Court: What is the ground of the objection?

Mr. Boudin: The ground of the objection is that that is inadmissible under your Honor's ruling with respect to——

5540

The Court: Well, do you claim that it has not been sufficiently established as to what it is?

Mr. Boudin: I claim both, if your Honor please. It has not been sufficiently established and it is not admissible——

The Court: All right, I will allow the Government an opportunity to prove the circumstances under which it was printed.

By Mr. Marks.

Q. Mr. Larkin, where did you obtain Government's Exhibit 69 for Identification? A. From our office.

Q. Where in your office? A. We keep it in a cabinet.

Q. And how did you obtain them in your cabinet? A. 5541
They are printed by the local union.

Q. And what is used as the model for the printed form?

Mr. Boudin: That is objected to.

The Court: Sustained.

Q. What is it printed from?

By the Court.

Q. Have you got more than one up there? A. We have, your Honor. We have a supply of them for the use of our members.

Q. For the use of the members? A. Yes.

By Mr. Marks.

Q. What is it printed from?

Mr. Boudin: That is objected to.

The Court: I will allow that if he knows.

5543

A. It is a set of by-laws drawn up by a committee ——

Mr. Boudin: If your Honor please, I move to strike out the answer.

The Court: Yes, strike it out.

By the Court.

Q. Are you a member of the union? A. Yes.

Q. And have you attended meetings of the union? A. Yes, sir.

Q. And do you know whether the union has a minute book? A. They have.

Q. Have you ever seen it? A. Yes, sir.

5544

By Mr. Marks.

Q. Do you know who drafted the by-laws of the local? A. A committee selected by the members—a committee of the members selected by the members to draw up by-laws for the local union.

Q. Do you know when? A. When?

Q. Yes, do you know when? A. On or about August 29, 1926.

Q. And are those the by-laws that are still in force?

Mr. Boudin: I didn't get that question.

The Court: Repeat the question.

(Question read.)

Mr. Boudin: That I object to; calling for the witness' conclusion.

The Court: Sustained.

Q. Have there been any amendments to the by-laws since that time? A. There have.

5546

Q. Have the amendments been incorporated——

Mr. Boudin: That I object to.

The Court: Sustained.

Is the minute book here?

The Witness: I believe the Attorney General has some of them.

Mr. Marks: Some of the minute books are in our possession, your Honor; not all of them.

Q. Do you know when the constitution of the local union was adopted? A. I don't understand that question.

Mr. Boudin: A constitution?

The Court: I believe he said, "The constitution."

5547

Mr. Boudin: That is objected to if it refers to this paper. If he means generally a constitution, there is no objection.

The Court: I will allow him to state if he knows there was a constitution adopted. That does not disclose the contents and is properly admissible for the purpose of ascertaining whether such a docu-

ment exists and informing the Government how to get it here. If he reframes his question in that respect——

Q. Do you know whether a constitution was adopted for Local 807? A. The only thing adopted is the by-laws——

The Court: No.

By the Court.

Q. Do you know whether there is a constitution? A. I do not, no, sir.

5549

By Mr. Marks.

Q. Well, will you look at Government's Exhibit 69 for Identification again and tell us now whether you know.

Mr. Boudin: That is objected to.

The Court: Well, I will sustain the objection.

Q. Does that refresh your memory?

By the Courts

Q. Does the paper, Exhibit 69 for Identification, or will the paper, Exhibit 69 for Identification, refresh your recol-
5550 lection? A. It is marked——

Q. No, no. I just asked you whether that refreshed your recollection. A. Yes.

The Court: Now go on with your examination.

By Mr. Marks.

Q. Can you now tell us whether a constitution was adopted for Local 807? A. It was.

By the Court.

Q. Do you know when? A. July 12, 1926.

Q. And do you know where it is? A. In this book.

Q. I mean the original? A. There isn't an original——

Mr. Boudin: I move to strike out the answer.

Mr. Marks: What was the answer to that?

The Court: One moment. I didn't hear what you said, Mr. Boudin.

Mr. Boudin: I move to strike out the answer. The answer was clearly not responsive to your Honor's question.

The Court: The witness says there is no original. 5552

Mr. Boudin: I was referring to the other one. Your Honor asked where it was and he said, "In this book." That was clearly not responsive.

The Court: All right, I will strike that out.

Q. Do you know where the original constitution is? A. The original of this book——

Q. No, the original constitution adopted by this association. Do you know where it is? A. No.

Q. Is it in your files, as far as you know? A. No, they are not.

Q. They are not? A. No.

The Court: All right. 5553

Mr. Marks: I renew the offer in evidence.

The Court: No, you have not shown proper ground yet for secondary evidence.

By Mr. Marks.

Q. Have you ever seen the original? A. You have got me all confused as far as——

By the Court.

Q. Mr. Larkin, how long have you been a member of 807? A. 21 years, 20 years.

Mr. Boudin: How many years?
The Witness: 21.

Q. How long was Local 807 in existence when you joined it? A. About 10 or 12 years.

By Mr. Marks.

Q. When you joined Local 807 had there been any constitution and by-laws enacted?

5555

Mr. Boudin: That is objected to.
The Court: Sustained.

Q. There was a constitution adopted after you joined: is that correct, Mr. Larkin?

Mr. Boudin: That has been answered.
The Court: Sustained.

By the Court.

Q. Did you have anything to do with the printing of this particular document here, Exhibit 69 for identification? A. No, sir. Merely to send it to the printer, that was all.

Q. Where did you get the—— A. Proof?

5556

Q. No. Where did you get the material that you sent to the printer? A. From the committee who drew it up.

By Mr. Marks.

Q. In what form was it? A. Written out in longhand.

Q. By a member of the committee? A. By a member of the committee, right.

Q. Now, did you get that document back from the printer? A. More than likely we did. That is the usual procedure, for him to return it.

Q. Do you know where that document is now? A. I do not, no, sir.

Q. How long is it since you have seen that document? A. Oh, I presume shortly after that was printed.

Q. Do you know when this was printed? A. I should say about August or September of 1926.

Q. And do you know when the constitution and by-laws were adopted?

Mr. Boudin: That has already been answered. 5558

The Court: Sustained.

By the Court.

Q. Did you ever attend a meeting of 807 at which there was any discussion of the matter before it went to the printer? A. Yes; the by-laws after being drawn up by the committee was read to the members and approved by them.

Q. Were you present? A. Yes, I was.

Mr. Marks: I renew the offer.

Mr. Boudin: I press the objection.

The Court: I will sustain the objection until you have shown that you cannot produce the minute book. 5559

By Mr. Marks.

Q. Do you know whether that constitution and by-laws is contained in the minute book?

Mr. Boudin: I object to the form of the question.

The Court: Well, I will allow him to say that, whether he knows or not.

Mr. Boudin: Is "a constitution and by-laws," instead of "that."

The Court: I do not care.

A. I do not know.

By the Court.

Q. Did you see the report of the committee that was presented and discussed at the meeting of 807? A. I did insofar as it was handed to me to send to the printer.

Q. Well, you say you were present when the matter was discussed? A. At the regular meeting.

5561 Q. Yes; and were the papers which were handed to you the same papers which were before the meeting when the discussion took place? A. I have every reason to believe that they were.

Q. Did you get a page proof or a galley proof from the printer? A. We did at the time.

Q. And do you know what was done with that when you received it? A. It was compared for accuracy and——

Q. Did you have anything to do with that? A. No, no. The officers took care of that.

By Mr. Marks.

Q. And did you receive the proof back from the officers?

5562 A. From the officers?

Q. Yes. A. To be returned to the printer as approved.

Q. And do you know whether the final form of this exhibit was compared after the printer submitted that to you? A. I could not say.

Q. Do you know whether this exhibit, Government's Exhibit 69 for identification, has ever been compared with these original papers?

Mr. Boudin: That has already been answered, if your Honor please.

The Court: You concede that?

Mr. Boudin: No, it has been answered——

The Court: I say, do you concede that it has been answered?

Mr. Boudin: I think it has been. The witness said he did not know.

The Court: Well, then it has not been answered.

Mr. Boudin: Well, an answer has been given to the question.

The Court: Well, I do not know. He might have refreshed his recollection in the meantime. I will overrule the objection. 5564

The Witness: Would you mind repeating the question, please?

Q. Do you know whether Government's Exhibit 69 for identification, this little book here, has ever been compared with the original draft of the constitution and by-laws drawn up by this committee of which you spoke?

The Court: Or the page or galley proof?

A. No, I do not know that.

Q. You did, however, receive the galley proof from the printer? A. Yes.

Q. And what did you then do with it? A. Turned it over to one of the officers. 5565

Q. Do you remember to which officer? A. To Mr. McCrann, who was then the secretary and treasurer.

By the Court.

Q. Is he alive? A. No.

By Mr. Marks.

Q. And did you receive it back from Mr. McCrann? A. Yes.

Q. Do you remember when you received it back, if there were any corrections indicated on the galley proofs? A. I do not recall now.

Q. Were there any page proofs submitted after the galley proofs? A. I don't believe there was, to the best of my recollection.

Mr. Marks: I renew the offer.

Mr. Boudin: I press the objection.

5567

By the Court.

Q. Now when do you say this particular book, if you know, was printed? A. When?

Q. Yes. A. I do not know, but based on the approvals here, I would give an approximate idea.

Q. Well, do you know when there was the last printing? A. No.

The Court: You say these have been given out to members?

The Witness: Yes, sir.

Q. Do you know whether any copy of that has been filed with the International Union? A. Yes, they have.

5568

Mr. Marks: I renew the offer.

Mr. Boudin: I press the objection.

The Court: Overruled.

Mr. Boudin: Exception.

(Marked Government's Exhibit 69.)

The Court: I was hoping you would look into Exhibit 68 and find out what has to be done to organize a subordinate local.

Mr. Marks: I didn't see anything in 68 on that, your Honor.

The Court: I thought you would find something in there about filing papers.

Mr. Cahill: I looked, your Honor. I found nothing.

Mr. Marks: There is a great deal in there about local unions, but I didn't see anything about their organization.

The Court: I have never seen it, so I don't know.

Mr. Marks: This exhibit, ladies and gentlemen, is headed——

The Court: By the way, it is received as against the local. 5570

Mr. Marks: Yes.

The Court: The defendant Local 807 only.

Mr. Marks: I understood that. This exhibit is headed Constitution and By-Laws of Truck Drivers' Local No. 807, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, adopted July 12, 1926.

At the present time, your Honor, there is nothing further in this that I should like to read to the jury. I should like to ask this witness a few more questions.

The Court: Proceed.

By Mr. Marks. 5571

Q. Mr. Larkin, do you know Robert Dillon? A. I do.

Q. Do you see him in this court room? A. I do.

Q. Will you point him out, please. A. (Witness standing) In the last row, the third from the left.

Mr. Marks: May we have the clerk call the name of Robert Dillon?

The Court: Yes.

The Clerk: Robert Dillon.

(A man stood.)

Q. Is that the man that is now standing? A. It is.

Q. Can you tell us whether or not Robert Dillon is a member of Local 807?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Sustained.

Q. Can you tell us whether Robert Dillon was a member
5573 of Local 807 in 1937?

Mr. Boudin: That is objected to.

The Court: Sustained.

Q. Have you ever seen Dillon in the headquarters of Local 807? A. I have.

Q. On how many occasions? A. I have no idea.

Mr. Boudin: That is objected to.

The Court: Overruled.

Q. Do you remember when for the first time you saw him in the headquarters of Local 807? A. Possibly in the early part of 1937.

5574

Mr. Marks: No further questions.

Mr. Boudin: No cross.

The Court: Are you all through? All right, next witness.

Mr. Marks: The Government rests, your Honor.

The Court: Well then, I will excuse the jury until tomorrow morning at 11 o'clock.

Mr. Boudin: If your Honor please, may we suggest that the jury be excused until Monday morning rather than tomorrow?

The Court: No. I am going to excuse the jury until 11 o'clock tomorrow.

(The jury retired from the court room.)

The Court: Now I take it you gentlemen want until tomorrow morning to make your motions.

Mr. Boudin: Unless the Government may have some motions now to dismiss as to some defendants anyway.

The Court: Well, I don't know about that.

Mr. Duff: If your Honor please, as to the defendant Noonan, I thought possibly we might be able to dispose of that motion today. 5576

Mr. Cahill: Yes, your Honor. The Government moves to dismiss as to the defendant Noonan.

The Court: Motion granted.

Mr. Duff: I would like my motion to be noted on the record. I thought probably, if your Honor please, that the modus operandi, so to speak, would be that there would be a direction of a verdict of acquittal from your Honor to the jury.

The Court: Well, there is no jury here now. You didn't make your motion while the jury was here. I can't direct it with the jury in absentia.

Mr. Duff: I would like to ask your Honor to call the jury back for a minute so I can make my motion. 5577

The Court: No. The jury has been excused until tomorrow at 11 o'clock. Do you want to press your motion at this time?

Mr. Duff: Yes, I do.

The Court: You have no objection, Mr. Cahill?

Mr. Cahill: I have no objection.

The Court: That motion is granted. The defendant Noonan is discharged from custody. What is next?

Mr. Duff: May I withhold my motion until tomorrow morning?

The Court: No; I have disposed of that. What is next?

(No response.)

The Court: Well, if nobody else has anything I have. What proof is there in this case, Mr. Cahill, with respect to the defendant J. Flanagan?

Mr. Cahill: If your Honor please, I have just been going over this list with my associates. The
5579 Government moves to dismiss as to the defendant Flanagan.

The Court: Motion granted.

What about the defendant Mosely Mulqueen?

Mr. Cahill: The Government moves to dismiss as to him.

The Court: Motion granted.

What about the defendant William Pelker?

Mr. Cahill: The Government moves to dismiss as to Pelker.

The Court: That motion is granted.

They are discharged from custody: all three of them.

Mr. Murray: May I call your Honor's attention
5580 to the defendant Duffy?

Mr. Cahill: The Government moves to dismiss as to Duffy.

The Court: Motion granted. Duffy is discharged from custody.

Mr. Cahill: The Government moves to dismiss as to the defendant Powers, your Honor.

The Court: What about the defendant Pollock?

Mr. Cahill: The Government moves to dismiss as to Pollock, your Honor.

The Court: Motions granted as to Powers and Pollock, and both are discharged.

Now, as to all of the other defendants you may make your motions separately as to any that you want to make them separately.

Mr. Boudin: I was going to suggest, if your Honor please, if the Government would be good enough to state on what particular testimony they rely on as to these defendants——

The Court: No, that is not the duty of the Government.

Mr. Boudin: I know it isn't, but——

The Court: They can do it if they want to, but 5582
there isn't any obligation to do it.

Mr. Boudin: I understand that perfectly. I was going to ask them to do it.

The Court: The Government has rested and the Government has moved certain defendants out of this case and they are out. Now as the case stands at the present time I take it that the Government rests upon its proof as to all defendants as to whom the indictment has not been dismissed, and it therefore becomes the duty of counsel for the defense to indicate which or all of the defendants as to whom they direct their motion for a dismissal.

Mr. Boudin: All right, if your Honor please.

The Court: And that need not be done now unless
you want to. 5583

Mr. Boudin: No. We would like to consult the record.

The Court: I will give you until tomorrow until half past ten, and I will take as much time as may be reasonably required for the consideration of argument on the motions to dismiss, and whatever the disposition of the Court may be with respect thereto, it is not my intention to take any testimony,

if the defendants desire to offer any testimony, until Monday morning.

Mr. Boudin: Thank you.

The Court: But I will state for your information now that I have excused the jury until tomorrow morning at 11 o'clock because there is often a slip twixt the cup and the lip, and there may be something that somebody might want to recall a witness for, and I wanted to have the jury available if there is any such situation arises and not have the plans that I just announced upset.

Mr. Boudin: That is satisfactory, your Honor.

5585 The Court: All right. Then we will take a recess at this time until half past ten tomorrow morning, and I would like to see counsel in chambers.

(Adjourned to May 10, 1940, at 10.30 A. M.)

New York, May 10, 1940,
10.30 A. M.

TRIAL RESUMED.

(The roll of the defendants was called and all were present.)

5586 (The following proceedings were had in the absence of the jury.)

The Court: Very well.

Mr. Cahill: If the Court please, may we add to our motion of yesterday a further motion to dismiss as to the defendant Macomber?

The Court: Granted.

I would like the record to show that Exhibit 36, which was marked for identification during the examination of

the witness John W. Hughes, was not finally disposed of when offered; and that the Court declined to take certain testimony with respect to the witness Perry and the witness Cavallo because all of the defendants had not then been connected up; and motions to strike in the case of the witness Chudy and Edward Deptula and Betts; with relation to the defendant Zollinger, Williams and Carli.

Is there anything further?

Mr. Ennis If the Court please, with respect to the defendant Zollinger, the Government wishes to show the Court the grand jury testimony for your inspection, because Zollinger was indicted under the name of "Richard Roe," and the witness Betts testified, identified him in court and testified as to him. 5588

The Court: I recall the testimony.

Mr. Ennis: May we do that now, your Honor?

The Court: No, that is not necessary.

Are you ready to go on with the motions?

Mr. Maguire: Yes.

The Court: That is the next thing in order. I will take it up. I was merely indicating what was on my docket here as unfinished. There is nothing further to be done about it. I feel I have done my duty in calling it to the attention of counsel on both sides.

Mr. Boudin: If your Honor please, Exhibit 36 for identification is not in evidence. There is nothing that counsel for the defense have to say about it. I take it it stays out of evidence unless something is done about it. 5589

The Court: Nothing goes in evidence except what is offered in evidence and which, if not objected to, is received, and if objected to is received over objection.

Mr. Boudin: If your Honor please, with your Honor's permission we would like to reserve motions to strike until after the defense has rested, or the entire case rested, if there be any further case after that.

The Court: Is there any objection to that?

Mr. Cahill: I have no objection.

Mr. Maguire: If your Honor please, with reference to the defendant George Bagley we move to dismiss on the ground that there has been no connection established. I think the testimony, if your Honor cares to have me review it briefly, shows that all Bagley did—rather, that the witnesses Hook and Fontana have mentioned Bagley, and it seems to simply appear in Fontana's testimony——

The Court: There is also a witness Zane who mentioned him.

Mr. Maguire: Yes; but I think that all it indicates or
5591. establishes is that he did work on those trucks. I do not think there is any further testimony with reference to it.

The Court: Well, if that is all you have to show with respect to Bagley——

Mr. Maguire: Yes.

The Court (continuing): —suppose you pass on to the next one?

Mr. Maguire: A similar motion generally is made on behalf of Joseph Bender. A number of witnesses did testify with respect to Bender, and generally we move to dismiss against him on the theory that he is not established to be part of any conspiracy. The witnesses that referred to him were Steller, Haversat and Theodore Steller.

The Court: Where is the defendant Macomber?

(A man stood.)

5592 The Court: I neglected to note that his bail is discharged.

Mr. Murray: Yes. Thank you, sir.

Mr. Maguire: Now, the next is Cahill——

Mr. Boudin: Excuse me. I would like, if your Honor please, to pass Cahill while I am reading the abstract of testimony which I just got a few minutes ago.

The Court: All right.

Mr. Boudin: The testimony relating to him, rather than his testimony.

Mr. Maguire: Now, the next is William Campbell, and generally, too, we move to dismiss as to him. He was mentioned by a number of witnesses, Chudy, Goddard——

The Court: Chudy, Hooks, Palmer, Stiles, Libe, LoBiondo and Hunter, according to my records.

Mr. Maguire: Now, the next is the defendant Joseph Deegan. He was mentioned by the witnesses Miners, two Miners, Michael Agoes—I think that is all. And the same motion generally is made in his behalf.

The next is the defendant Robert Dillon. He has been mentioned by a number of witnesses, and the same motion generally has been made in his behalf. 5594

The next is the defendant Frank Downs. Now, he has been mentioned by a number of witnesses, to wit, Robert A. Boyle, Koontz, Wood and Fidler, but I especially call your Honor's attention to the fact that the testimony shows that the man worked and at no time, however, is any conversation attributed to him. I think that is the extent of the proof insofar as it affects Frank Downs. It also shows that he was seen in the company of Randazzo and one or two others at various times; but no statement is ever attributed to him.

The next is Duffy, and your Honor has already disposed of that.

The Court: Yes.

Mr. Maguire: The next is Furey, and a number of witnesses have testified with reference to him, and the same general motion is made. 5595

The next is John Gaughan. There is testimony in the record with reference to this defendant from witness Edward Warren. Now, I do not think there is sufficient set forth in that testimony to indicate any connection.

The next is John Horan. He has been mentioned by the witnesses Miner, the two Miners. There is a conver-

sation alleged to have taken place with him, but generally we submit that he has not been connected with the offense charged. He was also mentioned by Michael Agoes.

The next is Andy Jakakas. Now the witness Hooks referred to Jakakas and identified him in court. He said that the first time he saw Jakakas was probably in 1937; the first three months in 1937. Jakakas was in his presence less than an hour, and I think that is the extent of his identification with reference to Jakakas. I don't think any act is attributed to him.

Now the defendant Max Katz is mentioned in the testimony of two witnesses, Harris and Finlaw. The only
5597 reference that Harris makes to him is that at some time that Katz worked on his truck. He didn't recollect any conversation with Katz. Katz was employed on the truck after the contract with 807 was signed. And the witness Finlaw said when an extra man was needed on his trucks of the Salem Express, one of the extra men that was employed was Katz. Now I respectfully urge that that which has been shown here is insufficient to establish a connection. And further, the second witness Finlaw failed to identify Katz in the court room. He just referred to a name.

Should I pass on, your Honor?

The Court: Yes, go right along.

Mr. Maguire: The next is Abraham Klenofsky. He has been mentioned by a number of witnesses and gen-
5598 erally we make the same motion.

The next is Leonard La Marne. He was mentioned by the witness Fontana, and Zane. I don't think that sufficient has been established by their testimony to establish a connection.

Now your Honor has disposed of the Macomber matter.

The next is Manual Magan. Magan was mentioned by the witnesses Mattson, Strozyk and Hunter.

The Court: And Layman.

Mr. Maguire: If he was, I don't find it here, sir.

The witness Mattson simply identified Magan, and the witness Strozyk said he went to Magan's home; he didn't know what he went there for; he believed Magan was working for him at the time.

The Court: Well, according to my records Layman said that Magan came to him and told him to hire a man and pay him so much money. Layman then telephoned the boss and Magan went to Williams and unloaded. He said he would wait for his money to come up, and on the second trip he met Magan at his home and they went to Williams, and Magan helped him to unload and he paid Magan $9.42, and he said there were a number of subsequent occasions. 5600

Mr. Maguire: Yes. There is nothing here (indicating papers) that he did work for that Eastern & Southern thereafter. I don't find a reference here to Layman's testimony, though.

The Court: Well, I am just giving you what I have on my notes.

Mr. Maguire: The next is Joseph Murphy. Murphy was testified with reference to by Carman, Carll and Zohlman. That is all, I think. Generally the motion is made with reference to him.

George Needelmann was testified with reference to by a number of witnesses and generally the motion is made as to him.

Now William Pelker—— 5601

The Court: He is out. Pollock is out and Powers is out. Randazzo is the next.

Mr. Maguire: Well, Randazzo: There was testimony with reference to Randazzo by a number of witnesses and generally the motion is made as to him.

Morris Reichler: I think that the record shows through the witnesses Boyle, Hooks and Trapani and Hummel that Samuel Reichler had a number of conversations with

Hummel with reference to unloading the trucks at Port Ivory; that Morris Reichler was present with Samuel in Allentown, I think, when they went out with the contract, and that Morris Reichler was present at the time when the FBI men spoke to them out in Port Ivory. Now as far as Morris Reichler is concerned, I think that his situation is quite different from Samuel Reichler on the record, and specifically a motion is made with reference to Morris. A further motion is made with respect to Samuel.

Now William Simpson was referred to in the testimony of Steller and Haversat, Hooks and Finlaw, and generally the motion is made with reference to him.

5603 Thomas Sharkey: There is testimony from Edward H. Strozyk, Milton Lahn, John Hughes, and generally the motion is made in his behalf.

Then Stolowitz: The only identification of Stolowitz in this case is made by the witness Goddard, and your Honor will recall that as to the alleged fight that took place between Brown and Weinheimer, he disappeared and came back in five or ten minutes and there were some eight men with him. This particular witness testified that Stolowitz was one of the eight. Now assuming all that could be accurate 100 per cent and assuming further that Stolowitz did strike Brown, I still submit that that certainly is no part of this case.

The Court: What did Allred say about Stolowitz?

5604 (Mr. Murray shows papers to Mr. Maguire.)

Mr. Maguire: I see that now, your Honor. Page 1583. There was a further statement with reference to Stolowitz, and generally the motion is made in his behalf.

The next is Venditti and generally the motion is made in his behalf.

The next is Peter Waskiewicz. Now the testimony as to him came from William F. Betts, Joseph Buglio, and also Harry L. Owens. The first incident happened at I

believe, the Embassy Grocery House. There he sought to procure the work of unloading and came over here to the Federal Building and was interviewed by the FBI men and went back and there was no interference. Although his name was referred to in Buglio's testimony, I think it was simply that he had hired him and the man did work for him to do some unloading at some time. Owens testified that Wuskiewicz was one of the men who unloaded his truck. The motion is therefore made in his behalf.

The next is Edward Weinheimer, and generally the motion is made in his behalf.

Generally also it is made in behalf of John Weinheimer. 5606

Generally also it is made in behalf of Harry Zollinger. I think that is all.

Mr. Boudin: If your Honor please, with respect to the defendant Cahill I move to dismiss and for the discharge of the defendant on the ground that there is no evidence produced which proves that he was part of any conspiracy to commit any crime or involved in the commission of any crime.

After reading the abstract of the testimony as prepared by Mr. Maguire and as far as my memory serves me, there are three witnesses who mentioned Cahill. One, the most important, was Mr. Beatty of the B. & B. Transportation Company. Then there was a Mr. Spackman, the owner of the Eastern Freight Lines, and a witness by the name of Bernot who, I think, testified that he was a driver for the Eastern Freight Lines, and one of those who drove his own truck by arrangement with the Eastern Freight Lines. 5607

Now as to Mr. Beatty, which is the most important testimony, we find the following: On January 27th, I think it was—Mr. Cahill will remind me: I think that is the date of the contract with B. & B. Transportation: I haven't got it here in the contract, but that is my recollection of it.

Mr. Cahill: Excuse me, Mr. Boudin. May I interrupt and ask to be excused, your Honor. I have to appear before the Grand Jury at eleven.

The Court: Yes. Very well.

Mr. Boudin: On January 27, 1938, B. & B. Transportation Company, which was Mr. Beatty, entered into an agreement with the union providing for the employment of union men upon certain terms and conditions, including a certain scale of wages. That is in evidence. Certainly up to that time there was no Cahill in evidence. The first time that Cahill appears in that connection is a few days after the making of the contract. The witness testified
5609 that Cahill appeared at the hotel in which he stayed in New York City and told him that he had been sent by the union to take care of the job, that he would work under that contract and would be the steward for the job. The witness had previously discussed with a man named McGavish the possibility of his employment, and while this conversation was going on between Cahill and Beatty McGavish appeared on the scene and then there was an argument between Cahill and McGavish as to who was entitled to the job and it was resolved in favor of Cahill, and then he took the work for the B. & B. Transportation. Now clearly there is nothing wrong about that. He continued to work in accordance with the terms of the contract, as testified to by the witness, until some time early
5610 in March; commencing about February 1 until some time early in March, when Cahill came down to Uniontown, Pennsylvania, which was the place of business of the B. & B. Transportation Company. He had not been paid; he came there accompanied by another man, Murray, who is not in court here but will be referred to when we discuss the other man's testimony, and primarily he was there for back pay. There was some discussion about the back pay and Mr. Beatty said he would like to have a change in the agreement; he couldn't afford to pay the union scale

So they made what was referred to as under-the-hat arrangement which provided, apparently, for a lower scale than that provided for by the contract, and Cahill proceeded to work under that arrangement until some time about the middle of May. I might say here that this witness testified that in the argument between Cahill and McGavish in the hotel room as to who was entitled to the job Cahill said that the union—he didn't mention the word "union"—that the objection to McGavish was that he was an under-the-hat man; apparently the union didn't trust him but insisted on the true scale of wages being paid. So they preferred Cahill.

However, that would not make any difference since that 5612
would not be a crime, would not be within the purview of either of the laws under which these indictments are found.

The next difficulty, assuming that the original one was some kind of a difficulty, occurred when Cahill wrecked a truck, as Beatty claimed, through carelessness. Cahill says it was an unavoidable accident. Apparently there was some difficulty about that. As the witness testified, Cahill gave an explanation that there was somebody who turned in in front of him and he could not avoid it. However, that clearly is not a matter with which the criminal law is concerned. At any rate, he wanted to get rid of Cahill, and there was some dispute about it. He complained to the union he wanted somebody else in his place.
But the windup of the whole thing was a telegram which 5613
is in evidence here, dated the 12th—in fact, two telegrams dated May 13th, as I recall it; there is no memo in this abstract here, but those are in evidence—one to Cahill himself and one to the union, saying that the difficulty had been straightened out and Cahill should continue to work.

So clearly in all of this there is not anything that remotely resembles the commission of a crime under either of the anti-trust laws as I read them, or under the anti-

racketeering act. Surely there was no racketeering involved; there was no force; there was no violence; there were no exactions of money by the use of force or the threat of force.

Then comes the next witness. I am not discussing at this point the question as to whether or not the mere working under such an agreement is a violation of the anti-trust laws, because I take it for granted that there will be no claim that the mere making of an agreement like the one that is in evidence, would be a violation of the anti-trust laws in the absence of anything else that would make it so. So that we need not discuss what could possi-
5615 bly make an agreement like that a violation of the anti-trust laws.

Now, the next witness who referred to Cahill was Spackman, who was the owner of the Eastern Freight Lines. Now, Spackman——

The Court: Excuse me just a moment, Mr. Boudin. I have this jury returning at 1 o'clock. I asked them to return because I thought there might be some proof that would be offered on one side or the other, or that there might be some correction in the record or something, and I had them here for that purpose. But it seems, apparently, there is no need for that, and I think I will let the jury go for the balance of the day.

Mr. Marks: May I interrupt you, if your Honor please?

5616 The Court: Yes.

Mr. Marks: The only thing the Government has in mind at the present time is to renew the offer in evidence as to this exhibit which your Honor reserved decision upon.

The Court: I asked about that before the argument on these motions.

Mr. Marks: I assumed that had to be done in the presence of the jury.

The Court: I called your attention to the fact that the exhibit had not been finally disposed of, and I asked: before

I took up the argument, if there was anything further to be done. Nobody said anything.

Mr. Marks: We were awaiting your Honor's decision on the offer in evidence.

The Court: There was not any decision for me to make on it.

Mr. Marks: I may have been mistaken, your Honor——

The Court: I excluded it at that time.

Mr. Marks: Well, the Government at this time renews the offer, and I assume that must be done in the presence of the jury.

The Court: Of course it must, but you must have some proof in order to offer it. I excluded it for lack of certain 5618
proof at the time.

If you are ready to put that in evidence now, I will call the jury in.

Mr. Boudin: May I be excused for a minute while your Honor is taking care of that?

The Court: Yes.

Mr. Boudin: I think your Honor said you are calling in the jury?

The Court: No, I did not say that. I said if they were prepared to put in any proof, I will call the jury in to listen to it.

Mr. Marks: Will your Honor bear with me for just a minute?

The Court: Yes.

5619

Mr. Marks: The Government won't press that any further, your Honor.

The Court: All right. Then the jury will be notified to return here Monday morning at 11 o'clock, and that they are excused for the day. I think perhaps they had better be brought in here.

(The jury entered the court room.)

The Court: All of the jurors appear to be present. There is nothing to be taken up which requires their presence, and I will instruct the jury that they are excused until Monday morning at 11 o'clock.

(The jury retired from the court room.)

The Court: You may proceed, Mr. Boudin.

Mr. Boudin: Now, the next witness who mentioned Cahill was this man Spackman who was the owner of the Eastern Freight Lines, also of Uniontown, Pennsylvania, and he referred to him in the following way: It appears from Beatty's testimony, that after he had made arrangements with Cahill, arrangements satisfactory to him with
5621 reference to the modification of the terms under which Cahill was to continue to work for B. & B., he called in; he telephoned to this man Spackman, who was his competitor but who was also about to go into partnership with him; and informed him of the fact that he had made a satisfactory arrangement and suggested that he might do likewise. And so Cahill and a man named Murray, who had accompanied him, or who was referred to as Murray—his name, I think, is McCaffrey, or some such name—and Beatty and Spackman met at the Lafayette Tavern or Lafayette Hotel in Uniontown, and they discussed an arrangement between Spackman and Eastern Freight Lines with Murray; and as Spackman specifically testified that Cahill said nothing during the conversation except in the general talk, except that he had made a satis-
5622 factory arrangement with Beatty, and that the rest of the dealings, whatever they were, were between Murray and Spackman.

Now, Spackman insisted on that several times, said that he had nothing to do with Cahill any further, although Cahill apparently had later gone into his employ when he got through with Beatty, because B. & B. Transportation Company went out of business on June 1st, and he

was still in his employ, apparently, at the time he testified at this trial, but no complaint at any time was made or suggested as to Cahill by Eastern Freight Lines or by Spackman. His complaint apparently was against Murray. He said so repeatedly.

Now, that brings us to the third witness Bernot. Now, Bernot was working for the Eastern Freight Lines, and he did not testify about any trouble of any kind, nor was there any suggestion of any illegal act on the part f Cahill by Bernot. His first reference to Cahill was that some day in 1937, I believe, he had some difficulty with an unknown man who wanted to work for him, work on his truck, to unload, and that he then telephoned to Cahill 5624
with whom apparently he had had previously some dealings or connections; that Cahill said to him, "Oh, let him go on; let him go ahead and unload"; and then he came down and loaned this witness $9.42——

The Court: They were not unloading; they were loading.

Mr. Boudin: Loading, perhaps.

The Court: They were loading sugar.

Mr. Boudin: Loading, yes. I think it was the American Sugar Refinery Company. I am relying largely on my memory. I had only a few minutes to glance at this memoranda. Well, they were loading or unloading. Whatever the difficulty was he had apparently been appealed to, because they had some previous dealings which were apparently satisfactory, and Cahill came over and gave him 5625
the $9.42 which he paid to that man, and that disposed of the incident.

Now, he said he had seen him a number of times afterwards, and that Cahill did some loading or unloading for him, and that he paid him on a number of occasions $9.42 just as he had been paying other men similar sums. No suggestion of either threats of violence, or of course no violence or force ever of any kind. Now, under these

circumstances, if your Honor please, there clearly can be no suggestion of a crime under the anti-racketeering act, and certainly I believe there could not be any suggestion of any offense against the anti-trust laws, unless we should assume that the very making of a contract to work for $9.42 a day was an offense under the law, which I do not think anyone will claim.

Therefore, I respectfully submit that under no aspect of the evidence would the jury be justified to find Cahill guilty of any of the offenses charged in the indictment, and that therefore the indictments ought to be dismissed as to him and he be discharged.

5627 The Court: Is that all?

Mr. Boudin: No, we have other motions. I am speaking now of Cahill.

The Court: Well, I am going to consider them all.

Mr. Boudin: Now, if your Honor please, my associates asked me to make the general motions which I would like to do. I would like to be excused for a minute, as there may be a rather elaborate argument on that.

May I be excused a minute before going ahead?

The Court: Yes, you may. We will take a recess for five minutes.

(Five-minute recess.)

The Court: Very good. Go ahead.

Mr. Boudin: If your Honor please, before proceeding to make motions generally on the evidence, I would like 5628 to move on behalf of the defendant Local 807 to dismiss the indictment under the anti-racketeering act, on the ground that a local union as such does not come within the purview of that act.

As to that we have made no such motion before. I want it understood it was not one of the motions that were made and argued before Judge Leibell, and therefore the decisions on those motions with respect to the indictments have no bearing on the present motion.

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This has to do with the problem of whether or not an unincorporated association can be indicted under that act. It is not a problem whether a local union as a union—in other words, it has nothing to do with the problem of the exemptions contained in that act, which were the things argued before Judge Leibell, in addition to the form of the indictment, which is also not involved now, but the problem whether an unincorporated association can be indicted.

If your Honor please, I respectfully submit that it is quite clear on the elementary principles of criminal law that an unincorporated association, bearing in mind its character which was discussed here yesterday, cannot be 5630
indicted under that act.

I take it that the Government in finding this indictment proceeded by analogy with the anti-trust act. Under the anti-trust act associations can be and are being indicted, there being an indictment right here under that act; but, if your Honor please, there is a basic difference between the two acts, both in their character as laws as well as in their provisions. In the first place the anti-trust indictment is found under a law which is now part of Title 15 of the U. S. Code, which deals with regulations of commerce and trade. In other words, the law deals not with offenses; it is not a criminal law primarily, even though it contains criminal provisions. Many of our trade laws, laws relating to commerce, contain criminal provisions, but they are not criminal laws. 5631

The anti-racketeering act, on the other hand, is part of the regular criminal code. Your Honor will find that it is part of Title 18 now. I think it is Sections 420(a) to (e) of Title 18 which deals with criminal laws as such.

Now, the laws relating to commerce, of necessity, because of the difference in character will have a different scope with respect to the kind of persons that may be involved. While trade associations or labor unions may

affect commerce they do not commit crimes. So that even if there were no differences in specific provisions and we were dealing with general principles of law, I should say from the decisions under the act, that this part of Title 15 would not be a precedent or could not be used as analogy for an act under Title 18 which deals with criminal law. But we need not speculate on that because the decisions under the Anti-Trust Act which say that an unincorporated association may be indicted specifically base it on the express provision of Section 7 of the Anti-Trust Act, which in its definition says that the word "person" as used in the act includes associations. There are no such provi-
5633 sions in the Anti-Racketeering Act. The Anti-Racketeering Law, if your Honor will look at the first section of that, begins with any person who does this, that or the other thing but, of course, "person" means a natural person and not an artificial person unless so stated, and if your Honor looks at it you will find that while this act contains a definition, there is no definition of "person" such as contained in the Anti-Trust Act. The very foundation upon which unincorporated associations have been held to be liable to indictment under the Anti-Trust Act is wanting in this case, and therefore "person" must be used in the sense of natural persons, and no indictment can be had against an unincorporated association as such.

Does your Honor want me to proceed with the other
5634 motions now or would your Honor want argument on each particular motion——

The Court: Of course, I want to hear from the Government on these motions, and it is a question as to whether the Government wants to take up each motion as you make it or whether they want to consider them in the order in which you make them.

Mr. Ennis: Your Honor, we have no special choice. We would like to meet your convenience on it.

The Court: Well, my convenience is to sit here until this case is finished. Would you prefer to answer Mr. Boudin's specific motion with respect to the second indictment now or would you prefer to have him state all of his motions?

Mr. Ennis: I would prefer to wait.

The Court: All right, go on and state your different grounds.

Mr. Boudin: Now, if your Honor please, referring to the same anti-racketeering indictment, as such, and limiting ourselves to the indictment, we respectfully move to dismiss as against all of the defendants on the ground that no case such as alleged in the indictment has been proven 5636
against any of them, nor has any other crime been proven against the laws of the United States, assuming that the violation of any other law could be considered under the present indictment which is specifically found under the Anti-Racketeering Act.

Now as I read the Anti-Racketeering Act, if your Honor please, it is quite evident that its purpose was to reach what is commonly known as the industrial racketeer. We don't need to read the testimony before the Committee on this act, the testimony before the Committee which was in charge of the bill, although it is very illuminating, but even aside from what was said at these hearings, it is quite clear that the intent was to protect against the kind of racketeering which has been shown in this Court during the past few years in a number of cases where organized 5637
crime was rampant, where people who had no relation to the industrial world either as employers or employees would organize for what was commonly called a shake-down under various forms. One of the forms was supposed to be protection against the labor unions, but that wasn't the only form; it had many forms.

The act on its face shows that its purpose clearly has nothing to do with any industrial association. I am speak-

ing now of the purpose of the act, as such, aside from its specific exceptions. But if there were any doubt about its purpose, the specific exceptions would clearly indicate that. Now there are two exceptions. I think one appears in Section 420(a), which exempts the payment of wages by a bona fide employer to a bona fide employee. I will come to this a little later and to the question as to whether there is any question of bona fides here or not. But it is quite clear that the intent of the act was to exclude anything that involves an actual labor dispute. It appears further on, I think, if I am not mistaken, under Section 420(d), it says, "That no court of the United States shall

5639 construe or apply any of the provisions of Section 420(a) to 420(e) of this title in such manner as to impair, diminish or in any manner affect the right of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

Now leaving out for the moment the word "lawful" to which I will come a little later, it is quite evident that Congress was very careful that the courts might not by mistake apply this act to situations which the Congress did not intend it to apply or which it did not intend to provide for in this particular act.

It seems to me that if we were limited here to the problem of the contract in evidence, the act could not possibly be

5640 held to apply. It is clear that the purpose of the labor union in this case was not to shake anybody down, but to provide employment at certain wages for its members. If we start out with the proposition that ordinarily there was nothing else but this, there would be no question that the act does not apply. What is there in the evidence in this case that might make it apply? There are two things that must be considered in connection with it. One is the expression "bona fide" in Section (a) and the expression "lawful" in Section (a) as a possible exemption from the

act. It is clear to me that as far as "lawful" is concerned the intention was not that everything involving a dispute in which an unlawful act was committed would come under the provisions of this act, but merely that this act may not be considered a blanket license for people to commit unlawful acts and claim an exemption. In other words, the word "lawful," as I read it here, was merely a safeguard against the claim that because a man is a union man he is exempt from the general law and that he can go out and hit somebody over the head and not be liable to be prosecuted for assault. It certainly does not mean that because a man hits somebody over the head he would be liable for racketeering. The statute is a racketeering 5642
statute. The purpose of this statute is to prevent shakedowns; it is not to prevent assault. There are plenty of laws to take care of assault. This was a special law to take care of a special purpose, and every word in it, including every exception from exemption, must be read in that connection.

The same thing with reference to the question of bona fides. It seems to me that there should be no question in this case, whatever we may think of the propriety of the methods used by the union as to whether they were or were not within their rights in exacting certain things, that clearly the dispute was a bona fide labor dispute. There is no question of the fact that the purpose of this union was to secure employment for its men, and that if any money was exacted—your Honor will recall that that was 5643
the only thing that is involved in the Anti-Racketeering Act; force or violence, as such, do not come under the Anti-Racketeering Act; threats of violence do not come under the Anti-Racketeering Act. The only connection in which force or violence or threats of force or violence are of importance is in connection with a shakedown, and clearly the purpose of this union was not to shake down but to provide employment and to provide employment at a cer-

tain rate. Therefore, there can be no question that these men were bona fide employees, that they were working under a contract but, if your Honor please, even if they were not working under a contract, even if they on their own account were seeking employment for themselves, they would not be liable under this Anti-Racketeering Act because clearly they were giving their services. They did not claim to be paid for something that was not done, and the only reason the word "bona fide" is at all mentioned in the act is, as it appeared at the hearing before the Committee, which was in charge of this bill, and as everybody knows, all of these racketeers like the Lepke outfit
5645 and the other outfits that were operating in what was known as the industrial racket, always got their shake-down in the form of some service, the service being to protect somebody against somebody else. Since protection is service, Congress in order to defeat these acts and not permit real racketeers to come in and say, "We were only getting paid for service," provided that it must be bona fide service. But here the unloading done by these men or any other men is clearly service and the payment was a bona-fide payment.

Let us take an illustration like this: An employer runs a non-union shop. Let us assume for the moment a non-union employer. The members of the union come to this employer and say, "You must not employ non-union men; you must employ union men." We will assume he wants
5646 to get cheap labor and he can get non-union labor cheaper. He says, "I don't want you." They say, "If you don't want us we will call a strike or a boycott," and he is then compelled to sign a contract with the union. Now that doesn't make the work done under that contract non-bona fide work nor does it make the pay for that work non-bona fide wages. The problem as to how they obtained the contract clearly does not apply to the problem of the bona fides of the contract itself.

A man can come here and say, "I deny that Cahill," or somebody else, "was my employee." Your Honor will recall this man Beatty said after Cahill had the accident to the truck when he had a fight with him, he said, he never employed him; that was nonsense. Not only had he made a contract with the union but he made a separate modification of the agreement with Cahill on his own account. Now because a man would testify under such circumstances that he denies the employment, that does not change the fact that there was employment. And it is characteristic of all the evidence that has been shown here that whatever the means whereby these men came to get employment, there is no doubt that the employment was 5648
there and that is what they were paid for, for a day's wages, and nothing else. In the entire case there was only one piece of evidence with respect to something else, and that is that $100 check to Robert Dillon, and even if it were a shakedown it would be an individual act, and I will discuss that when I come to the problem of the conspiracy. But even now as the case stands for the Government, it is apparent that there was a dispute about overtime. This man said he didn't pay it for overtime; he paid it because he wanted to get rid of him. That is merely a matter of motive; that is a different problem. What the motive of the man was in making a settlement for overtime in paying $100 does not affect the nature of the transaction itself. The nature of the transaction was an argument about overtime. Dillon said, "You owe me for overtime. I will 5649
not resign or cease to be your employee or abandon my right to go on strike unless the overtime is settled with me," and this man desired to get rid of Dillon and settled with him on the claim for overtime. That does not affect the nature of the transaction itself. It cannot be said that this was merely an ordinary racketeering shakedown. Certainly we would make a laughing stock of the law if we would apply a law which was intended to prevent in-

dustrial racketeering and apply it to trade union people, to ordinary workmen, to honest men, because they were wrong in a particular dispute. Assuming that they were wrong, which we do not concede at all, but facing the evidence now as it appears in its worst light against the defendants, not in its best light: According to Byrnes' testimony, giving it its worse face, he paid $100 in payment of a claim for overtime which he, let us assume, honestly disputed, because he was motivated by a desire to get rid of the man. That does not affect the fact that there was employment.

If your Honor please, there is more to that. Let us
5651 assume that a good many of these people went out and did something other than what a good union man should do. Let us assume for the moment that they went out and instead of giving an eight-hour day of work for the $9.42, which was the union scale, they tried to shirk on some occasion. It is evident that some of them got this pay only for an hour's work. Now, if your Honor please, I needn't argue before your Honor that; the mere fact that under certain conditions a certain amount of work may not be worth what you pay for it does not affect the nature of the contract that was made. Very frequently we make contracts which are apt to be costly. In other words, if I must have a certain person to do something for me and the man works on a per diem arrangement and I arrange for
5652 the per diem arrangement, the fact that the man may have spent only a few minutes under that arrangement and got his pay wouldn't make any difference. I take it that if I were on a per diem arrangement working for my client on a per diem arrangement and I came in this morning and made a motion before your Honor to dismiss and your Honor granted it in five minutes, that wouldn't affect my right to recover or even the propriety of the agreement. The agreement must be judged, not by what was actually done, but what the employer sought to accomplish. Of

course, my client had a right to claim a day's work from me; if I walked out, I wouldn't be complying with my contract, and I say from all the evidence as it appears here, if any one of these men shirked his duty and didn't give a day's work under the terms of the contract—of course, there are certain limitations under the contract and limitations which the union has a perfect right to put in in order to protect their workers and in order to protect itself from under-the-hat arrangements. This must be borne in mind in discussing these agreements, some of the terms of which may look to one who is not familiar with these things as being improper. Now some of these provisions are put in just to protect the union and other things to 5654
protect the members from under-the-hat arrangements. Bearing that in mind and bearing in mind the fact that $9.42 by the terms of the union rule was the wage, and that is the only thing that applies in this case, I say it certainly cannot be considered an offense against the Anti-Racketeering Law.

Some will say, "Yes, but how about these men who didn't live up to the union contract?" There is some testimony that one man said he didn't have to do any work at all. Let us look at that. In the first place, if your Honor would go over the entire evidence your Honor would find that one thing has been demonstrated in this case and that is this: That the only occasion where there was any question of an honest day's work being done for a day's pay under the 5655
terms of the agreement was in the case where the employer did not want to sign the agreement and was therefore trying to evade the signing of an agreement and make a private arrangement with these men. I challenge the Government to show one case in which a man refused to give an honest day's work for a day's pay as provided for in the contract with the approval of the union. I think in this very case of James Murphy—I am relying on memory and I may be wrong as to the extent of my recollection.

but my recollection is that the witness who testified to that incident specifically said that that happened before he signed the agreement, and when he came to sign the agreement the union officials told him he would get eight hours' work under the contract whenever he was ready to pay these wages under the contract. Your Honor must remember we are not trying here the individuals; James Murphy is not on trial for what he may have done or Robert Dillon is not on trial for what he may have done on a separate occasion. No one is on trial for what he did on a separate occasion. They are all on trial here as a part of the conspiracy, and therefore they must be judged
5657 not by what a man did individually in order to shirk, but what the purpose of the conspiracy was, the avowed purpose and the real purpose of the conspiracy was.

This doctrine of ours that everyone in a conspiracy is bound by the acts and declarations of every other member applies only to those acts and declarations which are done in furtherance of the conspiracy. Now the only conspiracy here that I can see, the only conspiracy in sight is to obtain contracts, union contracts, whereby a man would do eight hour's work for $9.42 per day in one case and $8.41 in another case. Clearly that conspiracy is not illegal. Therefore, all the individual acts which were not in furtherance of that conspiracy which were affected by the terms of the agreement which was the object of the conspiracy to obtain, are clearly individual acts, even assum-
5658 ing that they were improper acts. Therefore, the conspiracy, as such, including these men who are involved, can only be judged by the things that they could legitimately do if the object of the conspiracy had been attained and not by what they did as individuals.

In this connection I would like to call your attention to the testimony of the witness Hunter. I think he testified last Tuesday morning. Your Honor will recall that testimony and I think that testimony is very important. I

think, in my humble opinion, it is decisive in this case. That witness testified that the union. as such, objected to their making separate individual agreements. In other words, the only thing that the union sanctioned was the obtaining of this agreement. In fact, he testified that the union told him that the man who had already been working for him could not work for him even if he paid $9.42 unless he signed an agreement with the union. Now I take it that the union wanted a union contract just in order to be in control of the situation to see to the disciplining of its men, in order to make them work in case they didn't work, and your Honor will recall that one of the witnesses said—I don't remember just who it was—I think 5660
it was Spackman or one of them—that when he came to Campbell after that incident with the wrecked truck and Campbell told him his under-the-hat arrangement with Cahill was out and he would have to sign, he told him when he lived up to the terms of the agreement there would be no further trouble. In other words, what the union tried to do was to provide a proper standard of living for its members and to have them paid a certain scale of wages and put them in a condition where they could compete with other workers and get such work as possible for themselves. Surely under the Anti-Racketeering Act there is nothing wrong about that.

When James Murphy went out and met some man who preferred to deal with Murphy because he thought he would get an under-the-hat arrangement, naturally the 5661
union was not in a position to see that he gave them an honest day's work for his pay. But that was an individual act of James Murphy. Clearly that had nothing to do with any conspiracy on the part of the union or other members of the union. But if he did, when the contract was finally signed in the Murphy case, I believe the evidence shows that there was no further trouble, and that

Murphy did his work as a good union man ought to and is always instructed by his union to do.

Under these circumstances, if your Honor please, I cannot see that there is anything in this case that in so far as a conspiracy has been proven—that is to say a conspiracy on the part of its members—to compel—let us use that word—to compel employers who would prefer non-union arrangements, to enter into union contracts. Surely that kind of a conspiracy is not a violation of the Anti-Racketeering Acts, and therefore none of the conspirators are guilty thereunder.

But one may say, "Yes, but how about these apparent
5663 roving bands or groups of people that have been testified to by some, who go out and stop somebody and say, 'Well, you must take a City man and pay him $9.42 a day or $4.50, of whatever it is, per load'."

Now, if your Honor please, I should say that in the first place that is clearly not a conspiracy charged in the indictment. It would be against the conspiracy charged in the indictment if we were to assume that this was not merely preliminary to attempts to compel these men to make union contracts. In other words, we must look at this situation from two angles. Either this was concerted action on the part of the union and its members to obtain union contracts, such as were ultimately gotten wherever the union could enforce its rules, or these were individual acts of certain individuals or groups of individuals.

5664 If your Honor please, I have already argued one horn of the dilemma, namely, that such a conspiracy to enter into those contracts could not possibly be legal under the Anti-Racketeering Act.

Let us take the other horn of the dilemma and see whether the mere existence of—let us call them "roving bands"—I will use the worst term that could possibly be applied to them—who were out to obtain work for themselves and perhaps easy snaps for themselves, get easy pay

for little work: Now, if your Honor please, the difficulty of sustaining the case on that theory is that there was no general conspiracy. Once you leave the contracts out of consideration, once you assume that these men were not doing what the union wanted them to do, namely, to obtain contracts such as are in evidence here with those employers who did deal with the union—all of these defendants cease to be part of one conspiracy. They become dispersed. They become atomized. They either become unrelated individuals, or at worst groups of two or three, assuming that there is evidence that some of them traveled in pairs or in groups—that would not make them come under this conspiracy, because there is nothing in this case which 5666
would relate, let us say, three or four people, say those who acted with Ed Weinheimer—with those who acted, let us say, with Bob Dillon. I am just mentioning names. I do not know whether there has been any cross-relationship between these two, but the principle is the same. All of these thirty-six men, or whatever the number is, who are on trial here, would be reduced either to that many individuals, or some fifeen groups or pairs of people, each acting for themselves, for their own separate and individual interests, and therefore contrary to any conspiracy that is alleged in the indictment herein.

Your Honor must remember that this is not a series of indictments of pairs or groups of people. It is one indictment. There is one conspiracy charged. I mean one conspiracy in each count, while they are different counts, it 5667
is in order merely to conform to the different sections of the act; but the conspiracy is supposed to be one on the part of all of these; and the very assumption that would make their acts improper or illegal under any law, disposes of the possibility of their having acted as conspirators in one conspiracy, and therefore disposes of the indictments, of all of the indictments under the Anti-Racketeering Act.

Now, if your Honor please, on coming down to the question of the Anti-Trust Law, we are in a somewhat different field. On the one hand, the making of an agreement may be a conspiracy in itself, or the exacting of an agreement may be a conspiracy in itself. Even a bona fide agreement may be a conspiracy under the Anti-Trust Law. So that we are dealing with a different class of transactions than under the Anti-Racketeering Act.

The gravamen of the indictment under the Anti-Racketeering Act is that there were no bona fide agreements, bona fide employment agreements. On the other hand, the Anti-Trust Law must proceed upon the theory that there was a
5669 bona fide agreement of some kind, a conspiracy to effect a certain object. But here again, if your Honor please, I must call your Honor's attention that what I have said about roving bands in connection with the conspiracy under the Anti-Racketeering Act, applies equally as well under the Anti-Trust Act, namely, that the men here on trial are not indicted for individual acts of violence, coercion, or anything of the sort. We must start out from that basic proposition. Nor is there a charge of a series of conspiracies on the part of ten or fifteen separate groups. We must again discuss it from the basic viewpoint of one entire conspiracy to which all of these men are members, and their acts only important in so far as they are in consonance with the conspiracy and committed in furtherance of it.

5670 Therefore again individual acts of threats of violence, or even actual violence, or the use of force, or anything like that, is utterly immaterial, because they are not in furtherance of the conspiracy in this case, not only because violence is immaterial to the Anti-Trust Law in itself—and I will come to that in a moment—but because the acts clearly, if they were committed, were not in furtherance of the conspiracy but rather in obstruction of it.

Your Honor must remember and bear in mind in this connection that these employers were all attempting to evade what might be the conspiracy under the Anti-Trust Law, namely, a general arrangement with the union. Wherever there was any force or threat of force outside of those acts in which it was said that work was stopped, or unloading was stopped, with a statement that "You cannot unload unless you make an agreement"—I am speaking of cases where threats of force or actual force was used—are clearly outside the conspiracy, because the union was not interested that Bob Dillon or Ed Weinheimer or somebody else get a snap and perhaps unload, if such a case did occur, two or three trucks, and get two or three times pay for one day, although there is no evidence of that sort in the case, but might perhaps be intimated by the prosecution. On the contrary it was clearly out to prevent it, and it was to their interest to prevent it, because it was to the interest of the union that all its members be employed; and I think your Honor may take judicial notice that unions have specific rules which provide for share the work in times of unemployment. And there is certainly nothing proven here that this union as a union acted differently or would countenance any conduct that would militate against such rules. 5672

Now we come to the basic problem of this situation, namely, is it a violation of the Anti-Trust Laws for a union and its members to come to an employer and say, "We will prevent your unloading of this load in the City of New York or make you pay our men to do the unloading"? 5673

I respectfully submit that there is no case, certainly no case in the United States Supreme Court and no case in any lower court within recent years, which would hold that to be a violation of the Anti-Trust Act. Bearing in mind the problem of the violation of the Anti-Trust Act by a labor union, we must remember one thing; we must always bear that in mind, and that is this, that the Anti-

Trust Act is primarily an anti-monopoly act. The purpose of the law is to prevent monopolies. Monopolies have from ancient times been considered inimical to the welfare of the community, because every monopoly, in the last resort, had a tendency to raise prices. In other words, the Anti-Trust Act is an anti-price control act. I mean the United States Supreme Court and all other courts have repeatedly discussed this basic character of the act, and all courts agree on that.

In so far as the question of the restraint of trade is concerned, it is merely ancillary to the problem of monopoly, and one of the very first cases decided under that act
5675 United States v. Patterson, which afterwards became famous as the Cash Register case, in 228 Fed. Rep., I think, but I am referring to the first case, 54 Fed. Rep., decided by Judge Putnam. This was clearly brought out, that the two sections of the act, the first section dealing with restraints of trade, and the second section dealing with monopolies, must be read together, and that the first section is ancillary to the second section.

Now we come here to a very peculiar situation, and that is this: The purpose of the statute is to prevent monopolies. It is to prevent price-fixing, because price-fixing is anti-social. Price-fixing usually means higher prices instead of lower prices. But when it comes to labor, the community is interested. It is the officially adopted policy of
5676 the country that the price of labor should be as high as possible, not as low as possible. I think the Government will admit that a mere agreement on the part of workers, if the workers of the entire country got together under one huge monopoly, the American Federation of Labor or Congress of Industrial Organization, or both of them put together, to keep up a high standard of prices, or even to raise the standard of prices of labor, would not be a violation of the statute. In fact, the statute specifically says so. Therefore the problem arises, what is there that has

been proven in this case that militates against it? Clearly the attempt of Local 807 to enforce a high standard of prices or of wages—that is, price of labor or wages—is not a violation of the act. It is one of the legitimate objects of a labor union which are specifically exempted by the Clayton Act, and which are concededly exempted. Therefore, nothing done in pursuance thereof or in furtherance thereof can be a violation of the Anti-Trust Act.

If your Honor please, I do not mean to say that nothing done in furtherance of an object may not be a violation of some other law; that nothing done may not be illegal per se. Undoubtedly an attempt to hit somebody over the head, or hitting him over the head in order to induce him 5678
to maintain a price or a wage, whether the man be a recipient of a wage or the giver of a wage, would be a crime, but it would not be a crime under the Anti-Trust Law; it would be a crime under the ordinary criminal laws of the State under which that is committed; and in that connection I respectfully call the Court's attention to the repeated decisions of the United States Supreme Court under the Anti-Trust Act, stressed in the Deering case—the Duplex Printing Company v. Deering—and the case of Bedford Cut Stone; and in every case where this matter has been discussed by the United States Supreme Court, the Court has specifically held that there is no difference under the Anti-Trust Law between the use of peaceful means and the use of violence. In other words, it is the object and the effect of the agreement that counts. It is 5679
the character of that agreement which makes it either a violation under the law or outside of the law and not the means employed in order to effect that object.

The mere fact, therefore, that somebody has employed force or a threat of force, quite aside from the fact that an individual act does not count—that it is the concerted acts which count—and there is no proof in this case that any acts of violence or force were committed concertedly; but

I am leaving that out for the moment. I will come to that a little later. I will assume for the purpose of this point in my argument that the acts were actually either originally contemplated or afterwards approved by the union as such, and that therefore by all of the members; that we, these thirty-six men and the union, got together and said, "We will go out on the highways and we will commit these acts of violence in order to obtain such contracts." I say, if your Honor please, that in such an extreme case, the case might come under all kinds of criminal laws, but it would not come under the Anti-Trust Laws.

In this connection I will call your Honor's attention
5681 particularly to the two Coronado cases which I think settled the law on this point in so far as necessary. There is much more to our argument, but I am willing at this point to rest on the Coronado cases alone. Your Honor will recall what happened in the Coronado cases, and the two decisions that were rendered by the United States Supreme Court. In the first case, which is reported in 259 U. S., I believe, the United States Supreme Court reversed a decision of the lower court, I believe, holding the union and its members, or certain of the unions, liable under the law.

Now, there was a case where the violence was of a most extreme kind. Not that somebody said, "I will throw your truck into the river," which is a mere figure of
5682 speech; I do not suppose anybody takes a truckman's statement seriously that "I will dump your truck into the river." There is no evidence that any truck has ever been dumped either into the East River or the North River. The nearest that we ever came to real violence in this case was the instance of the fellow who said that his pants or his trousers, as my friend Mr. Murray said, were ripped. Well, the rip has not been shown. We will assume that there was a rip and a scuffle. Now, your Honor knows that that is a mere nothing compared with violence which

occurs occasionally in labor disputes. The violence in the Coronado case was of the extremest kind. As I recall rightly, the mines were flooded; cars loaded with coal were burned. I think men were killed, if I am not mistaken, in the course of that dispute. Yet the Supreme Court said that all of that made no difference in the case, as a crime is not within the provisions of the Anti-Trust Act; any violence, no matter how illegal, outrageous and objectionable does not bring it within the law.

The Anti-Trust Law is a trade and commerce law. It is not a criminal law; and again, in this connection, I call your Honor's attention to the fact that even in our published code of laws; it is not part of Title 18, even though 5684
Title 18 contains criminal provisions about the trade; but those are put in a separate chapter and are labeled offenses against trade and commerce, and they are put in the Criminal Code under Title 18.

The Anti-Trust Act does not deal with offenses against interstate commerce or foreign commerce. It deals with regulation, and therefore it appears in Title 15 which deals with commerce and trade and its regulation.

It is made a part of the regulation of commerce and trade that certain agreements are illegal, and it is the agreement that is the important thing, because commerce is done by agreements. Every transaction, every commercial transaction, every trade, every deal that is done, is in contemplation of an agreement. If a man sells to 5685
another one a piece of merchandise, that is an agreement, a contract of sale. If a man ships a piece of merchandise, it is a shipping agreement to transport that merchandise. In other words, it is the agreement that is all important, and nothing can be considered a violation of the Anti-Trust Act unless the agreement is such that it violates the Anti-Trust Act.

An agreement to commit a crime does not come under the Anti-Trust Law, unless the agreement do these things

in the course of which, in furtherance of which the crime was committed, is in itself a violation of the Anti-Trust Law; and that is shown by the second Coronado case.

In the second Coronado case the very same facts which were held in the first Coronado case not to be a violation of the Anti-Trust Law were held to be a violation of the act. Now, why? And the answer to it is given in the opinion in the United States Supreme Court in the second Coronado case, which is reported in 268 U. S. as follows: It said that it appeared not that there was more violence done, but that the strike itself was not for a legal purpose, namely, for the purpose of obtaining higher wages for the
5687 men involved, but for the purpose of affecting the price of coal in interstate commerce.

The general coal market—it was proven there at the second trial—they introduced in evidence certain resolutions of the United Mine Workers at national conventions, in which specific resolutions had been passed that certain efforts should be made to equalize the price of coal in interstate commerce so that West Virginia coal—wherever the Coronado case arose—should not compete with others. In other words, the decision went off not because of any violence but because there was an agreement to affect the price of a commodity in interstate commerce, not the wages of men. And that is the difference between the two cases. In the first case it merely appeared that these people were
5688 engaged in a strike for the purpose of unionizing and raising wages; whereas in the other one it appeared that the unionization and the raising of the wages was not an end in itself, but that the real purpose, the purpose behind the calling of the strike, was in order to affect the price of coal in interstate commerce.

We need not go into the question whether that was also sufficient, or would be sufficient under present existing statutes; but taking the case as the law then stood, without the later acts of Congress, it is sufficient to dispose of the present purpose.

There is nothing in this case that indicates that there was an agreement on the part of this union or of its members, assuming that they were all acting in concert, that the price of anything but their labor should be affected. There was nothing there except that they wanted to be employed, and to be employed at a certain rate. Now, neither of these things is a violation of the Anti-Trust Act. Again I must call your Honor's attention to the fact that it has been repeatedly held that it is a legitimate purpose of a labor union, under the Clayton Act, to attempt to unionize; in other words to get employment for union men rather than non-union men. And it has been repeatedly held under the State law, and the same is true under 5690
the laws of the State of New York, and I take it is true under all laws, at least as the common law is now understood in most—well, I should say in all of the commonwealths of this nation.

In the discussion of this phase of the subject, if your Honor please, we must start out with the proposition that a union can never be a monopoly. That is a basic proposition. I think that will be conceded by the Government, aside from the fact that there is a specific statute —the Clayton Act specifically so provided, that a union cannot be legally declared a monopoly or as an organization existing to restrain interstate commerce. But every union has its purpose of raising wages, and every union has, as one of its avowed objects, to monopolize all the labor in its industry. No one that I know of would today 5691
say that it is an offense against either the anti-trust act or any other law for any union to strive to monopolize all the labor in its industry; that is, to attempt to have every union man, every man, every worker in the industry become a member of the union. From that follows that it is a legitimate object for a union to see that only union men should be employed. In fact, that is the way you get ordinary workers into a union. So that what is known

as the closed shop agreements have become an accepted fact in our industry; and let me say at this moment, is specifically approved of by the National Labor Relations Act under certain conditions, and the conditions are merely that the——

The Court: Well, don't let us go into the National Labor Relations Act. That is not before us here.

Mr. Boudin: No; but, if your Honor please, the fact that closed shop agreements are legal——

The Court: Let us confine ourselves to the issues raised by this indictment, and please do it in your motions.

Mr. Boudin: Well, if your Honor will permit me I
5693 respectfully submit that the provisions of all existing laws insofar as they define what a labor union may do is germane to the subject, because under the Clayton Act the labor unions are specifically exempted——

The Court: Well, the question is not all the things that a labor union may do; the question involved here is is there anything here that has been done that they cannot do?

Mr. Boudin: That is correct.

The Court: Now let us talk about that; let us not discuss the general subject. We are going to confine ourselves to the issues in this case. When you were talking about the laws of contracts I did not interrupt you; I was patient with you; but if you are going to go off into all the branches of the law in which labor is employed
5694 we will be here for a week; and I am anxious to have you confine yourself to the issues which are raised by the pleas to the indictments in this case.

Mr. Boudin: Well, I appreciate your Honor's patience, and the only reason——

The Court: All right. Let us get down to the bare facts.

Mr. Boudin: —and the only reason I refer to it is——

The Court: Now, please do not offer any apologies for it; let us get down to bare facts.

Mr. Boudin: Well, I will say, if your Honor please, that there is nothing in the anti-trust law which would prevent a union and its members from going out and saying to any employer, "You must," or "You should" or "We want you to employ our men at a certain wage, and if you do not do that we shall use all means in our power to prevent you from doing it." Now, if in pursuance to that somebody goes out and commits an assault, it is a private offense of his own for which he is properly punishable, and we respectfully submit it does not make——

The Court: Mr. Boudin, we are not here to try substantive crimes, but substantive crimes may be either a 5696
part and parcel of a conspiracy which may be material to it on the question of intent. Now, do not let us waste any time in discussing the substantive crimes unless it has to do with the elements of the indictment.

Mr. Boudin: Well, there is nothing in the case that would show that these people have conspired—if your Honor please, this is a conspiracy case we are trying—that these people, the union and its members—and we must judge the whole aggregate and not what a particular individual did—have conspired to commit any crime, not only under the anti-trust act, but any crime at all. On the contrary, all the evidence shows is that insofar as there was collective action on the part of the union and its officials and its membership, it all went to the obtaining of a contract which I claim is perfectly legitimate. 5697

I think that is the substance of our motion.

The Court: All right.

Mr. Ennis, what I would like to have you discuss, and if I may suggest, I would like to propose the order—first, the indictment under the Anti-Racketeering Act, and secondly, the indictment under the Sherman Act, and third the question, if you desire to present anything on it, with respect to conspiracy under either; and fourth, the rela-

tion of acts as complained of here in these indictments in relation to the burden on commerce. Then anything after that that you want to.

If you would like to have a recess of five minutes, I will take it.

Mr. Ennis: It would be very helpful, your Honor. Thank you.

The Court: Five minutes recess.

(Short recess.)

The Court: All right.

Mr. Ennis: If the Court please, as to the discussion or the motion addressed to the Anti-Racketeering Act
5699 with respect to all of the defendants, Mr. Boudin, as I understood it, in his closing remarks, said that all that was done in this conspiracy was merely obtaining a day's pay for a day's work under the contract. And his view of the case is the best point of departure for emphasis of the Government's case.

With a great deal of what he said we can agree, that activity of the union or the individual in obtaining contracts or obtaining a day's pay for a day's work or even obtaining pay for less than a day's work is not a conspiracy under the racketeering statute and also not under the Sherman Act, but the thing that Mr. Boudin did not speak of and the thing of which the Government complains and the thing we feel we have proved here is the means by which the union in a conspiracy with these individuals
5700 sought to achieve that objective. The union did not merely seek to enforce a contract properly obtained. We think that the union conspired and lent its force to the acts and threats of these individuals to obtain that contract and to obtain payments irrespecive of any work that was done.

Now speaking a moment of the statute, of the anti-racketeering statute: As Mr. Boudin properly pointed out, its purpose is to prevent racketeering in industries, as he called it, industrial racketeering, and of course with

that conception we agree, but he says that his union and his individuals were pursuing, by proper means were pursuing their labor objectives and therefore did not come under the statute. Our point is on the evidence that is precisely the question of fact, whether this union and its members were by proper means pursuing a labor objective. Mr. Boudin in his argument assumes that a relation of employment was created. We say that on the facts proved that is precisely the question in the case, whether a relationship of employment was created, and even if the proof shows that eventually a relationship of employment was created, the important thing is the acts done or the combination, the plan, the scheme, the conspiracy by which 5702
persons were required to establish that relationship of employment.

To meet that approach to the problem Mr. Boudin argues, as I understand it, that any acts or any threats, or any acts of violence committed by these individuals were not in furtherance of the conspiracy but were opposed to the conspiracy; that any conspiracy that the union was in was simply after a contract was acquired to have the employers conform to it, but that is not the case we think the Government proved. As we see it, the Government has proved that these individuals by threats of violence and by consents produced by threats of violence within the terms of the Anti-Racketeering Act stopped these over-the-road trucks and in furtherance of the conspiracy with the union brought them to the union hall 5703
and forced these contracts on them. The simplest test as to whether they were in furtherance of the conspiracy or opposed to the conspiracy I think is this: That these individuals by themselves are nothing. Certainly threatened assaults could have been taken care of by local enforcement and other means than a case of this kind. It is a fact that they were speaking not for themselves but for the organized strength which they represented in this

Local 807. That is the reason that we have them here, and is the case that we have proved. We think that the evidence shows that the union lent itself in this conspiracy and lent its organized strength and indeed lent the organized strength of its many members, who are not and were not engaged in any of this conduct, lent it to the combined purpose of the officers of the union and the delegates whom we have on trial and to the defendants. Incident after incident in the evidence shows a typical pattern of conduct; an individual would stop the job and he took the man to the union headquarters and the delegate would say to him, "He stopped your job; it is his
5705 job. You have got to sign a contract or he will physically prevent you and we will use our strength to physically prevent you from doing any business in New York." No talk there about peaceful means, of using peaceful means of strike or even any proper means of boycott and peaceful conduct. People were told in the union headquarters by the delegates that "You will sign this contract or not do business in New York and we will enforce that by preventing you from coming into New York. This man who stopped your truck physically in interstate commerce, it is his job; he will pick your men. You have no choice about employing men. You cannot even employ other 807 men. This man who seized your truck, it is his job in New York City."

We submit, your Honor, that the evidence amply shows
5706 not only that the union entered into that arrangement but that it was the union's power which made the arrangement at all possible, and if you separate that initial conduct in the combination by which these contracts were obtained and attempt to simply look at a later relationship of the 807 men working under the contracts and being paid, you are not looking at the conspiracy and the combination which we think the Government's evidence has shown. Even apart from the contracts, the scheme and

the conspiracy as we see it was to force this employment or this working of 807 men on over-the-road trucks even regardless of whether a contract was signed and that the delegates of the union, binding the union, entered into that arrangement.

For example, the evidence shows that the defendant Campbell when he talked to Hooks on the first occasion said that they would not require a contract then, but he would have to use 807 men on his trucks and later the question of a contract would come up. The responsible officials in the union entered into and bound the union in all parts of the conspiracy and the combination, and the union was not limited in the evidence merely to 5708
enforcing by peaceful means the contracts which were obtained by these means.

Mr. Boudin, giving one example of divorcing certain violent conduct from the conspiracy, as he would like to define it, mentioned the incidents of these roving bands stopping interstate trucks and demanding that 807 men be placed on the trucks. Of course, that conduct is not opposed to the conspiracy with which we charge the union and the individuals. It was, as we see it, the very heart of the conspiracy.

The evidence of driver and employer, one after the other, shows that the pattern of conduct was to stop their trucks, hold them in New York for days if necessary, and they put it up to the owners and drivers that to get their trucks out of New York City in some instances or to 5709
continue to do business in New York City it was necessary to go to the union to make this arrangement.

Now it is our contention that circumstances like that prove beyond any question that the union was in this arrangement and in this conspiracy to use force and threats of force to induce these contracts within the terms of the Racketeering Act.

As a point of detail, of course, the Government contends that the contracts themselves were things that fell within

the terms of the Racketeering Act, which were obtained by these forbidden means and, of course, that is the essence of our case: The means by which the union and these individuals sought to achieve this result.

Now so far as the Sherman Act is concerned we feel that as we see it any conspiracy which does violate the Racketeering Act does violate the Sherman Act because if a conspiracy involves the use of violent means required by the Racketeering Act to affect interstate commerce, certainly such a conspiracy using such means is an unreasonable restraint on interstate commerce within the meaning of the Sherman Act. Of course, conspiracies within
5711 the Sherman Act, many of them might not be conspiracies within the Anti-Racketeering Act, but one which is under the Racketeering Act is almost certain one under the Sherman Act.

Mr. Boudin in analyzing the Coronado case emphasized that the crux of the matter is not violence but it is the agreement to restrain interstate commerce. Of course, it is true that that is the legal conception which gives Federal jurisdiction and brings it within the statute, but that problem of whether the violent conduct tends to restrain interstate commerce is only a difficult question in cases like the Coronado case where the business involved is manufacturing. There the violence in manufacturing was the flooding of coal mines and that sort of thing. Of course, the Court had to scrutinize to see if violent
5712 conduct was engaged in with an intent not merely to destroy local property but with an intent to affect interstate goods moving in interstate commerce. Now there is no problem like that in a case where the most obvious of interstate commerce is involved, namely, the transportation industry in interstate commerce. In such cases the conduct of violence necessarily affects interstate commerce and, of course, on the evidence that was the case here. The simple brutal conduct was stopping the trucks in

interstate commerce, and you have no problem of deciding whether local violent conduct might in some indefinite way or some remote way affect interstate commerce. The violent conduct was impressed directly upon the movement in interstate commerce.

As I recall, Mr. Boudin emphasized the legitimacy of objectives that he claimed the evidence shows the union was attempting to seek, but of course the Supreme Court has ruled that the violent means even if used to obtain a legitimate objective may constitute a violation of the Sherman Act. Now insofar as Mr. Boudin has made an argument about the union being a person under the Racketeering Act, I merely refer your Honor to Judge Leibell's opinion and the motion to dismiss. I have at- 5714
tempted to restrict myself to the question of the proof we have offered under the indictment.

Your Honor suggested that I also discuss the effect of this conduct on interstate commerce and I merely repeat what I have tried to say, that where the industry involved is transportation and where the conduct under scrutiny is directed at an interstate transportation, at that business of interstate transportation, it is the most obvious, the plainest case you can have of affecting interstate commerce.

The Court: It has to go further than that; it has to put an unreasonable burden on interstate commerce.

Mr. Ennis: That is the legal conception, of course, your Honor, but we maintain on the facts that the stopping of these trucks and the holding of the trucks until con- 5715
tracts were entered into constitutes a very plain case of an unreasonable burden on interstate commerce, and I might say that that concept of unreasonable burden on interstate commerce is only a crucial question where the conduct is directed against, for example, manufacturing, and it is necessary to trace the scope or the amount of the burden on the following interstate operations. But there is, for example, a case where a truck bearing, I think it

was, just one ingot of pig iron or something of that kind, was stopped by force or threats, and that was held to be a crime or restraint, sufficient restraint on interstate commerce. The problem of unreasonableness is where you have the violence at one or the other end of the interstate transaction.

I think that is all I have, your Honor. Thank you.

Mr. Boudin: If your Honor will permit me I would like to say a word or two in respect to what Mr. Ennis said.

The Court: Yes.

Mr. Boudin: Mr. Ennis has said that the Supreme Court has decided that the mere use of violence alone will bring
5717 a case within the purview of the Anti-Trust Act. Frankly, I am not familiar with any such case, and if Mr. Ennis will be good enough to give me the title I would like to look it up. I venture to say that I think he is in error, that there is no such decision, but I would like to examine the particular case he has in mind in order to make sure that I am right.

Have you got that, Mr. Ennis?

Mr. Ennis: What I had in mind was the Coronado case.

Mr. Boudin: No, the Coronado case holds nothing of the kind. I would be very glad to discuss it in a memorandum if your Honor thinks it necessary.

The Court: I don't think it is necessary.

Mr. Boudin: On the question of the amount of burden: Your Honor suggested that that is an important point.
5718 I didn't go into that because it seemed to me that the only burden we imposed was the burden of wages, of a higher wage. When you discuss the question of burden, you must always bear in mind the effect of the conspiracy when complete. Now the effect of the conspiracy when complete and when its object is attained in this case would be the obtaining of contracts like the one in evidence and those contracts merely provide for a certain wage which clearly cannot be an unreasonable burden no matter how

high the wage is. When the Court speaks of unreasonable burden it does not speak of the means whereby the restraint is effected, but the burden is in the restraint itself. It has nothing to do with the stopping of a truck or anything of that sort.

Now I would like to say, however, that the statements made by Mr. Ennis with respect to the steel billets case where he said that the stopping of one truck was considered a burden: If he looks at the O'Brien case, 198 Fed., and makes an examination of that case, Mr. Ennis will find that that was a case of an attempt——

The Court: Well, you need not waste any time on it because I am not going to consider it. So that is out.

5720

Mr. Boudin: All right. There is one other matter I would like your Honor to consider and that is this; that is, on the question of evidence: The provisions of the Norris-LaGuardia Act with respect to the amount of proof there must be in a labor case, whether against a labor union or members; it specifically says that there must be proof of specific authorization or acceptance thereafter. Now I respectfully submit to your Honor that there isn't a particle of proof, not a scintilla of proof in the entire case that any of these acts were prior to the commission arranged by the union or that they were afterwards adopted by the union. That is important not only with respect to the union itself but also with respect to the members since they are not sought, as I said before, to be held here as separate individual groups, but as one entire group. There must, therefore, be approval by the entire group, as such, which in this case means the union.

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The Court: Well, when this case recesses it will be until Monday at 10.30, and in the meantime I will reserve decision on the individual motions as to the defendants Bagley, Jakakas, Katz, Morris Reichler, Stolowitz, Waskiewicz, as I desire to examine the testimony concerning those particular defendants. As to the other individual

defendants and as to Local 807 the motions to dismiss will be denied in all respects. I do not feel that this is the time to make any considered statement or opinion.

There are, naturally, very interesting questions presented here. No one doubts that a union may adopt lawful means to attain its legitimate objects and of its right to unionize. There is, however, substantial proof in this case of some acts of violence related to one or another of the defendants, and a circumstance at least that must be borne in mind is that the men who were affected in these instances or concerns which were affected in these instances had actually employed union men themselves. There
5723 hasn't been anything submitted to me up to now that a union man in New Jersey or Pennsylvania, who belongs to the International through one of its locals hasn't as much right to work in New York as any other place, and I think that in the absence of any proof or any law covering that situation, that where a man who is engaged in interstate commerce employs union labor and crosses a State boundary and then has to pay other union labor for doing the same thing for which he employed the drivers who brought his trucks into the State, that presumptively presents a question of placing a burden upon commerce, interstate commerce. I don't doubt the right of men to organize themselves and fix wages and if the wages are not paid they don't have to work. There isn't any doubt about that, but on the other hand, I am not going to
5724 debate now what the effect would be if any organization of men got together and demanded a greater amount of compensation than the earnings of the business itself could pay them alone. That is going into the doctrine of reason and I have to read again the decision that was rendered the other day in the Milwaukee case before I make up my mind where we are now on the doctrine of reason.

We will adjourn until 10.30 on Monday and the jury will be here at 11 o'clock and I will announce the disposition of those motions upon which I have reserved decision before the jury comes in and then we will be prepared to go on with the case according to the determination of counsel for the defense with respect to what they propose to do.

Mr. Boudin: I take it, your Honor, an exception to all defendants?

The Court: Yes.

Mr. Boudin: To your Honor's overruling the motions.

(Mr. Boudin made a statement off the record.)

Mr. Ennis: Does your Honor wish to hear Government counsel on the reserved motions? 5726

The Court: Well, I may on Monday morning.

Mr. Ennis: All right.

The Court: I may on Monday morning. You may think over in the meantime just what your position is with respect to each of the particular defendants the disposition of the motions as to whom is held in abeyance.

(Adjourned to May 13, 1940, at 10.30 A. M.)

New York, May 13, 1940,
10.30 A. M.

TRIAL RESUMED. 5727

(The clerk called the roll of the defendants and the defendant Stolowitz was absent.)

(The following occurred without the hearing of the jury):

The Court: On Friday the Court reserved decision as to certain individual defendants and since then has read the record with respect to the testimony appertaining to those defendants, and I will say now unofficially that those motions are denied.

Has the roll call been completed?

The Clerk: Yes, Judge.

The Court: All defendants present?

The Clerk: Stolowitz is missing.

The Court: Well, proof has been submitted to me that Stolowitz is confined to his home, and I have had in chambers both the attending physician and also the physician who has made an examination of him at the request of the United States Attorney, and it is apparent from his physical condition that he is unable to be here today.

Now as I understand it, Mr. Murray, you feel that the defendants have not had sufficient time within which to review the testimony and arrange the order in which you
5729 will call any witnesses you may desire to produce here?

Mr. Murray: Yes, your Honor.

The Court: And I think under those circumstances and in view of the absence of the defendant Stolowitz that we will bring the jury in and adjourn this case until tomorrow morning.

Mr. Murray: Yes, your Honor. That is the request of the defendants.

(The jury entered the court room.)

The Court: Members of the jury, owing to the illness of one of the defendants it will be necessary to adjourn this case until tomorrow and the adjournment will be taken until 11 o'clock tomorrow. You are now excused until that time.

5730 (The jury left the court room.)

The Court: I thought it was better to adjourn to 11 instead of 10.30 so that whatever the developments may be here tomorrow there will be adequate time to consider the situation before court convenes. The court stands adjourned.

(Adjourned to May 14, 1940, at 11.00 A. M.)

New York, May 14, 1940,
10.30 A. M.

(The following proceedings were had in chambers):

Present: The Court,
Mr. Cahill,
Mr. Ennis,
Mr. Marks,
Mr. Burling,
Mr. Murray,
Mr. Maguire,
Dr. Gottlieb, and
Dr. O'Connell. 5732

The Court: All right, doctor, did you examine the defendant Stolowitz this morning?

Dr. Gottlieb: I did.

The Court: What is his condition and how does it compare with that of yesterday?

Dr. Gottlieb: There seems to be an aggravation of the condition of yesterday. While he still has his arthritis in the left knee joint and swelling about the joint, he is also complaining of some pain in his right knee joint. In other words, the process seems to be extending to other joints, and he is in no condition to leave his bed.

The Court: Dr. O'Connell, did you see him this morning? 5733

Dr. O'Connell: I did.

The Court: Do you have any different diagnosis than that made by Dr. Gottlieb?

Dr. O'Connell: No, sir. I said it was arthritis yesterday, and I still believe it. The left knee is less painful to him, but there is more fluid in it. He has some complaint of pain in the right knee, and both ankles and in the left hip.

The Court: Well, Dr. Gottlieb, is it your opinion that he is not physically able to come here and participate in the trial of this case?

Dr. Gottlieb: He is not.

The Court: Can you state with any degree of certainty at all, based upon your examination, how long a time Stolowitz may be so physically incapacitated?

Dr. Gottlieb: It will probably be a matter of weeks. In view of the fact that the process seems to be spreading to other joints it will probably take possibly two weeks. It will certainly be a matter of weeks.

The Court: All right. Now what do counsel suggest?

5735 Mr. Cahill: Does your Honor feel any differently about waiver now that the government's case is in?

The Court: About what?

Mr. Cahill: Waiver of his presence, now that the government's case is in?

The Court: Well, what do you mean by waiver?

Mr. Cahill: Waiver of his presence, except in the event that counsel wishes to put him on the stand.

The Court: You mean that he waives his presence?

Mr. Cahill: If counsel were willing.

The Court: How can he do it?

Mr. Cahill: It has been done.

The Court: In a felony case?

Mr. Cahill: Yes, it has been done.

The Court: I would doubt very seriously if it was done

5736 rightfully. If you can show me any authority I would like to see it.

Mr. Cahill: I know Judge Knox did it in the Lepke case; but it is a moot point.

The Court: I think it is a moot point whether he waives or not. There isn't any doubt in my mind that some of the authorities—and I don't speak of authorities in the sense of decisions; I speak of them in the sense of human beings—hold to the contrary. A defendant may plead to an

dictment charging him with a misdemeanor through
unsel, and he may be tried in absentia, but it is my opin-
n that where he is charged with a felony he must not
ly plead to the indictment in person, but he must be
esent during the trial, and he cannot waive. Now if
ere is any decision to the contrary on that I would like
see it.

Mr. Cahill: I will see if there is anything; I will have
looked up, Judge.

Mr. Murray: As I understand it, your Honor, I believe
at defendant's counsel cannot waive his presence in a
lony indictment, and that any testimony taken must be
ken in his presence; and in the seocnd place, if I could 5738
ive I would decline to waive, because it is impossible
thout producing the defendant to make his defense in
is instance.

The Court: What would happen in this case, Mr. Cahill,
suming that the defense here was completed in a week,
d assume that the defendant himself by a document
knowledged before a notary public or other person
thorized to take acknowledgment of deeds, and filed with
e clerk of this Court specifically waives his presence, and
nsented that any testimony in this case offered as against
ybody might be considered as against him with the same
rce and effect as though he were present personally, and
en the defense reaches the point where they say, "We
ve completed the testimony on the part of all the de-
ndants except for Stolowitz; we desire to put him on 5739
e witness stand and he is not here; he is in a hospital or
nfined to his bed at his home," and you call in Dr. Gott-
eb and he says that he had been there that particular
orning and examined the defendant and the defendant
as physically unable to leave his home; what position
ould this trial be in?

Mr. Cahill: I think then there would be no alternative
t to sever as to him, but the event that I was looking

ahead to was an improvement in his condition which would enable him to testify if he wished to, prior to the conclusion of the trial. My whole feeling is against severing where I have so many defendants, because if you sever as to one there will be more.

The Court: Nobody is more reluctant to sever than I.

Mr. Cahill: I understand, but I wanted to make my own view clear. If you sever as against one today you will have another one ill tomorrow.

The Court: I am not so sure about that.

Mr. Cahill: Well, that is my fear.

The Court: There doesn't seem to be any doubt about the fact that this man is ill.

5741 Mr. Maguire: May it be pointed out that last Saturday when I heard of the condition of this man I notified the government and suggested that they have a physician examine him?

The Court: Well, we had two men who were ill here, and there was no severance; the case went on as against both of them. There is a difference between a defendant malingering and a defendant having a legitimate physical disability. I don't make the law; I try to interpret it; many times wrong, I guess; but I would like to see a decision by some competent authority where a defendant has waived his presence and it has gone up.

Mr. Murray: The only time I know where a proceeding can continue against a defendant charged with a felony is

5742 where his own misconduct in the courtroom, such as creating a disturbance or shouting and impeding the progress of the trial, then he can be removed and the trial can proceed, but that is the only felony situation that I know of where it can be done.

The Court: Well, the government has had cases here where they insisted that the defendant had to be personally present to plead to a misdemeanor indictment. I will say to Mr. Cahill that I don't think he agrees with that.

Mr. Cahill: No, I don't. I am not sure of the question of waiver. I don't urge it. I respectfully point out that it has been done here.

The Court: Well, there are a lot of things that are done here, and I question sometimes whether they are done authoritatively or not.

Mr. Cahill: I never looked the point up.

The Court: Well, we will have to make a disposition of it at 11 o'clock. I think you gentlemen might confer as to what you are going to do. It will avoid any discussion before the jury; and then if a mot on is made——

Mr. Cahill: If Mr. Murray will move to sever I will consent to it.

5744

Mr. Murray: That job is not mine, Mr. Cahill; that is your responsibility.

Mr. Cahill: In the light of the illness of the defendant I move to sever as to Stolowitz.

The Court: Well, I will say now unofficially that that motion will be granted when it is made outside.

Mr. Cahill: I would like it to be stated, your Honor, as to the grounds on which I move to sever.

The Court: Certainly. You mean here?

Mr. Cahill: No; before the jury; that I move to sever on the ground of illness.

The Court: That is all right. I think you ought to indicate too that this illness developed last week and that Mr. Maguire notified you promptly of it.

Mr. Cahill: I would be glad to.

5745

The Court: And that you immediately employed a physician to make an examination of the defendant and that we have waited until this morning to see whether there was a possibility that the difficulty would clear up.

Mr. Cahill: I would be glad to.

The Court: And that it now appears that it would be necessary to adjourn this case at least a week.

Isn't that correct, Doctor?

Dr. Gottlieb: Correct.

The Court: And therefore the jury can understand that they would have a choice of holding this case over for a week or more or severing and going on with it this morning. All right.

(The following proceedings were had in the courtroom, at 11 A. M., in the presence of the jury.)

(The roll of the defendants was called and all were present except the defendant Stolowitz).

The Court: Mr. District Attorney, all of the defendants have answered present today and yesterday except the de-
5747 fendant Stolowitz.

Mr. Cahill: If your Honor please, I was advised on Saturday by Mr. Maguire of defense counsel as to the illness of the defendant Stolowitz, and thereupon I called in a doctor on behalf of the government who examined Stolowitz and made a report to the Court yesterday as to his illness. Stolowitz's personal physician was also present. We were advised that the defendant Stolowitz was not in physical condition to continue with the trial yesterday, the illness in question having been one that developed, so I am informed, during the latter part of last week for the first time. So we asked your Honor to take a one-day adjournment in light of that fact, and we caused a further examination to be made of the defendant Stolowitz by a government doctor this morning at 10 o'clock, and that
5748 doctor has reported this morning at 10.30 that in his opinion the defendant Stolowitz will not be in physical condition to continue with the trial for at least a week; and in light of the fact that we have had his one adjournment and because we have so many other defendants on trial I think we should go ahead with the trial without him, and therefore I respectfully move on the ground of his illness to sever the trial as to the defendant Stolowitz.

The Court: Members of the jury, it is of course unfortunate that the trial of this case has had to be interrupted by illness, but that is not to be unexpected where there are so many persons concerned, and I have satisfied myself this morning by discussing it both with Dr. O'Connell, who is the family physician for the defendant Stolowitz, and with Dr. Gottlieb, who was engaged to make the examination referred to by Mr. Cahill, and I am satisfied from statements which they have made to me that it would require an adjournment in this case for at least a week in order to insure the presence of the defendant Stolowitz.

So under those circumstances it seems to me that the district attorney is acting properly in requesting a severance of the case as to Stolowitz in order that you and the other defendants may not be inconvenienced by a long adjournment of this case, and the motion will be granted and the bail of the defendant Stolowitz will be discharged. 5750

Mr. Cahill: If your Honor please, I would ask that bail be continued rather than discharged, for the time being at least.

The Court: Well, I will continue bail, if that is your request.

Mr. Cahill: Thank you.

The Court: On last Friday the indictments in this case were dismissed as to the defendants Duffy, Flanagan, Mulqueen, Noonan, Pelker, Pollock, Powers, and Macomber, and you may if you wish check those names on the list which was furnished to each of you, and I will read that again: Duffy, Flanagan, Macomber, Mulqueen, Noonan, Pelker, Pollock and Powers. All motions made on behalf of all the other defendants have been denied, and in that connection I will say to the jury that the denial of the motions as to the other defendants does not mean that the Court has any opinion with respect to the guilt or the innocence of those defendants, but that the Court as a matter of law determines that there are questions of fact 5751

which must be submitted to you for your determination and it will be for you to say upon the facts whether the government has sustained its burden and established the guilt of any or all or none of those defendants.

Mr. Boudin: If your Honor please, we respectfully except on behalf of those defendants as to whom your Honor last Friday reserved decision. That is in addition to the exception taken on behalf of those defendants Friday.

The Court: Well, for the purpose of the record you may have an exception now in the presence of the jury upon all of the motions made by counsel for all of the defendants
5753 and which were denied. We are now ready to proceed.

DEFENDANTS' PROOFS.

JOSEPH DEEGAN, of 119-26 237th Street, St. Albans, Long Island, New York, called as a witness in behalf of defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Mr. Deegan, are you a married man? A. Yes, sir.
Q. Are you a member of Local 807? A. Yes, sir.
Q. How long have you been a member of that union? A. A. 6/7/27.
5754

The Court: That is June, I take it?
The Witness: I believe so.
The Court: June 7, 1927?
The Witness: Yes.

Q. When you became a member of Local 807 approximately 13 years ago, before that time had you been a member of any other labor organization?

Mr. Ennis: Objection as immaterial.

The Court: Sustained.

Mr. Murray: Exception.

Q. Now, Mr. Deegan, there has been testimony here that approximately in the last week of February, 1937, you were employed and paid by the Reliable Motor Freight Company of Norwalk, Connecticut. Now, before February of 1937, did you have other employment? A. I did.

Mr. Ennis: If the Court please, I object to the characterization of employment which is an ultimate issue in this case.

The Court: Overruled. He may say whether he 5756
did or not.

The Witness: I did.

Q. What employment did you have? A. With the Lion Brewery.

Q. What work did you do in the Lion Brewery? A. Truck driver, delivering beer.

Q. And how long had you been employed by the Lion Brewery? A. Well, when beer came back I started to work there and I worked, I believe, about three years.

Q. In February of 1937 did you know Howard A. Miner of Bridgeport, Connecticut, who was the manager of the Reliable Motor Freight Company of Norwalk, Connecticut? A. I did.

Q. How long had you known Mr. Miner? A. Between 5757
25 and 30 years.

Q. Where did you know him from? A. From the neighborhood.

Q. Were you brought up with him? A. Practically.

Q. Did you go to school with him? A. Yes.

The Court: Suppose we find out what neighborhood.

The Witness: Well, call it the Chelsea neighborhood.

Q. Mr. Deegan, will you tell us as precisely as you can how you became connected with the Reliable Motor Freight Company of Norwalk, Connecticut?

Mr. Ennis: Objection on the ground that it calls for a conclusion.

Mr. Murray: Your Honor, he said he was employed and the district attorney objected to the word "employed."

The Court: Allowed.

5759

Mr. Murray: He objected to the word "employment" and I am using another word.

The Court: I have already allowed it.

Mr. Murray: The question is withdrawn.

The Court: Thank you.

Q. Mr. Deegan, under what circumstances did you have employment with the Reliable Motor Freight Company of Norwalk, Connecticut?

Mr. Ennis: Objection to that.

The Court: Sustained. Did you ever work for the Reliable Motor Freight Company?

The Witness: Yes.

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The Court: When did you begin?

The Witness: The first week in March, 1937.

The Court: Before you began to work did you have a conversation with anybody?

The Witness: I did.

The Court: With whom?

The Witness: Mr. Miner.

Q. Where did you meet Mr. Miner when you had that conversation? A. In his office on Tenth Avenue, between 20th and 21st Street; I forget the number.

Q. How did you come to go to his office? A. Well, the manager told me that Miner—I was shaping for a job, you understand.

Q. What was the name of his manager? A. Robert Kiel.

Q. When you say you were shaping for a job, will you please tell the jury what the term "shaping for a job" means? A. Well, we go in to see if there is any work. If there is a day's work, all right; if not, we just go along to another place where there is work. 5762

Q. Did you meet Mr. Miner on that occasion that you have spoken of? A. Mr. Kiel——

The Court: No. Did you meet him?

The Witness: No.

Q. After your conversation with Mr. Kiel did you subsequently meet Mr. Miner? A. I did.

Q. How long after the conversation with Mr. Kiel? A. About five or six hours.

Q. Did you have a talk with Mr. Miner? A. I did.

Q. Will you be good enough to tell the jury what the conversation was? A. I was in the office. Mr. Miner came in and he seen me. He said, "Hello, Joe." I said, "Hello, Howie." He said, "What are you doing?" I said, "Nothing." 5763

"Working?" I said, "No."

"Want to go to work here?" I said, "Yes, if there is work."

He said, "All right." He told the manager, Robert Kiel, to give me all the work he could. That was in the latter part of February, the last week in February, and I started in the first week of March, I believe it was on a Monday morning.

Q. What time did you go to work on Monday morning? A. 8 o'clock.

Q. And where did you go to work at 8 o'clock Monday morning? A. I believe 179 Tenth Avenue, the office.

Q. What kind of work did you do? A. Delivering miscellaneous loads; drove a 7½-ton Mack. The load consisted of 10 or 12 tons.

Q. What kind of merchandise did you truck? A. Miscellaneous. Machinery; cartons, cartons of gin; all commodities.

Q. Did you make deliveries in more than one place or only one place? A. Several deliveries.

5765 Q. Where did you customarily make deliveries while you were so employed? A. Piers, all about the City.

Q. Now, when you went to work at 8 o'clock in the morning when did you ordinarily quit work? A. 5, 5.30, 6.

Q. After your employment by Mr. Miner, did you have a conversation with him?

Mr. Ennis: Objected to as a characterization, your Honor.

The Court: Well, it is, but I will allow it. It merely necessitates another question as to whether he had a conversation after the day he went to work. Proceed.

Q. After your employment with Mr. Miner did you
5766 have a conversation with him? A. Yes.

Q. What conversation did you have with him? A. The first conversation I had with him was over the worthless checks.

Q. What conversation was that? A. I called him up. That was the 6th I got the check; the 12th it was returned.

The Court: The 12th of what month?

The Witness: The 12th of March. I called him up on the wire. I had told him that the check was worthless and what was he going to do about it. "Well," he said, "I hated to do that to you on account of you being a friend, but I knew there was no money in the bank when I made the check out, but figured the money would be in the bank to cover the check when it came back." But the check had went there and come back, and came back to my hand again, and it was worthless.

Q. Mr. Miner testified here that in the early part of 1937 he had a conversation with you in which in substance he told you that it looked like he was going to close his doors and that you suggested to him that he borrow $25,000 from the bank. Did you have any such conversation with him? A. I did not. 5768

Mr. Ennis: I object to the form of that question, your Honor.

The Court: Sustained.

Mr. Ennis: I move to strike out the answer.

The Court: Strike it out.

Q. In the early part of 1937 didn't Mr. Miner say to you that it looked like he was going to close his doors? 5769

Mr. Ennis: I object to the form of that as leading, your Honor.

Mr. Murray: If your Honor please——

The Court: Overruled.

Q. Did Mr. Miner say that to you? A. He did not.

Q. Did you say to Mr. Miner that he should borrow $25,000 at the bank? A. I did not.

Q. How long altogether did you work on Miner's trucks? With the trucking concern? A. Well, some weeks I worked three days, two days; for a period of about two months.

Q. Did your employment with Miner extend beyond the two months? A. No.

Q. Now, did you have any acquaintanceship with Lillian P. Miner? A. I did not.

The Court: Did you know her?

The Witness: I did not.

Q. Did you tell Mrs. Miner or did you say to Mrs. Miner
5771 that you did not care if the company went out of business? A. I never spoke to Mrs. Miner.

Q. Or that the work would go to other truckmen and that you would get a job with other truckmen? A. I did not.

Q. Did you say to Mrs. Miner on the telephone that she had better send down your pay or the trucks wouldn't work in New York City?

Mr. Ennis: I object to that as already answered, your Honor.

The Court: Yes. He said he never talked to her at any time about anything.

Mr. Murray: Well, if your Honor please, haven't I got the right through this witness to have him
5772 make a categorical denial of the testimony of the Government's witnesses.

The Court: You have, but the witness has already said he never talked to her about anything. So he couldn't have had any such conversation if he never talked with her. He has already categorically denied what you put to him and said in addition to that, that he never talked to her and didn't know her.

Q. Now, do you recollect the names of any drivers that drove trucks for the Miner concern? A. One driver was named Jolly, and I knew the other name was Stretch. That is all I knew.

Q. Did you have any conversation with either one of them concerning your work on their trucks?

Mr. Ennis: I object to it as immaterial, your Honor.

The Court: Overruled. He may answer yes or no.

A. Yes. 5774

Q. What was the conversation?

Mr. Ennis: Objected to as immaterial.

The Court: I will sustain the objection until you fix the time.

Q. Well, you testified that you went to work the first week of March, Mr. Deegan. A. That is right.

Q. With that date in mind can you fix the time when you had the conversation with these men or either of them? A. Oh, about a week or two after.

Q. Will you tell us what the conversation was.

Mr. Ennis: I press the objection, your Honor.

The Court: Overruled. 5775

A. Well, they were glad to have us take the truck——

The Court: No, no.

Mr. Ennis: I move to strike it out.

The Witness: That is all I could say. They were glad to have us take the trucks.

The Court: Strike it out. You were asked for a conversation; not what their mental feelings were.

The Witness: Well, that they were not in the union.

The Court: Who said that?

The Witness: Jolly.

Q. Mr. Deegan, the rule obliges you to as nearly as possible recite the words that were said in the conversation. Will you try to do that? A. To the best of my ability.

Q. Now will you proceed and give us the conversation that you had with this driver? A. Well, they said they had no union books and that their hours were so long that they were glad to have us take the trucks when they arrived in the City; on account of the long hours that they
5777 worked—they used to leave at night and roll up there and put a load on and proceed back in the morning.

Q. Did he say how long he worked? A. Well, I would have the truck ready for him——

Mr. Ennis: I object.

The Court: Strike it out.

The Witness: About 12 hours.

The Court: Is that what he said, about 12 hours?

The Witness: 12 hours.

The Court: No. Is that what he said?

The Witness: Yes.

The Court: About 12 hours?

The Witness: Yes.

5778 Q. Was there any talk between you and him about wages? A. Yes.

Mr. Ennis: I object to it as immaterial.

The Court: Sustained.

Mr. Murray: Do I understand your Honor rules ——out the conversation about wages?

The Court: I do.

Mr. Murray: The defendants respectfully except.

Q. Was there any hostility between you and this driver, or were your relations friendly? A. Friendly.

Mr. Ennis: I object to that as immaterial and move to strike it out.

The Court: I will allow it.

A. Friendly.

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Mr. Deegan, did you know another driver here in 5780
New York named Mitchell? A. I know of him.

Q. When you first went to see Miner was Mitchell working for Miner? A. No, sir.

Q. Had Mitchell been working for Miner prior to your going to see Miner? A. I believe he worked there.

Q. When you saw Miner on the occasion that you described, the first occasion where you talked to him about work, tell us how long it had been since you had seen Miner before that time? A. I should judge about 10 or 12 years.

Q. How frequently had you seen him 10 or 12 years before? A. Quite a lot. I heard his name mentioned.

Mr. Cahill: I move to strike it out.

The Court: Strike it out. 5781

Q. How frequently had you seen him 10 or 12 years before?

The Court: You mean prior to 12 years before.

Mr. Cahill: Yes, your Honor. I am trying to place the number of occasions.

A. Well, on and off. I couldn't just exactly say.

Q. Was there a man named Horan working for Miner when you had this conversation in February? A. There was.

Q. Who had originally stopped this job, this Miner job?

Mr. Murray: I object to the question.

The Court: Sustained.

A. I don't know.

The Court: Strike out the answer.

Q. Had Horan been the first 807 man to work for Miner?

5783

Mr. Murray: I object, if your Honor please.

The Court: If he knows.

The Witness: I couldn't say.

Q. Did you have any conversation with Horan before you went in to see Miner in February, 1937? A. I did.

Q. Will you tell us when you had that conversation? A. In the office.

Q. What office? A. Reliable Motor Lines.

Q. And when was it in point of relation to your conversation with Miner? A. In the afternoon.

Q. The afternoon of what day? A. The day I was to meet Miner.

Q. The day you saw Miner? A. Yes.

5784

Q. And who was present? A. Miner, Horan, Robert Kiel.

Q. Was that the very first occasion you had ever talked to Horan about Miner? A. Yes.

Q. Did you come to meet Horan at Miner's office by previous appointment? A. Yes. I spoke to him out on the sidewalk just as a member of Local 807.

Q. Did you talk to him about Miner out on the sidewalk? A. No, sir.

Q. Tell us the conversation you had with Horan that afternoon. A. I was talking to him about general things, work; when Miner came in——

Q. No. Is that all you can tell us of the conversation with Horan? That is what I am asking you about. A. Looking for work; shaping.

Q. Well, I press you: Can you tell us anything more of the conversation you had with Horan on that occasion? A. That is all I know.

Q. Did you discuss Mitchell? A. No, sir.

Q. With Horan? A. No.

Q. Did you discuss with Horan your going to work for Miner? A. No, sir. 5786

Q. Can you recall anything more that was said in this conversation with Horan A. That is all.

Q. Now, during this period that you worked for Miner you say you worked two days or three days a week, is that true? A. Whenever the trucks got in; yes, two or three days a week.

Q. Was that the only employment you had during that period?

Mr. Murray: I object to it on the ground that it is immaterial and irrelevant.

A. That is all.

The Court: Overruled.

5787

Q. Did you ever work for the Evans Motor Truck Company? A. I did.

Q. When did you go to work for the Evans Company? A. Oh, about three months after; after I left the Reliable.

Q. That would be in what month? A. I guess around—about the latter part of June or so.

Q. You went to work for the Evans Company in the latter part of June, 1937? A. About that.

Q. Is that the first time you ever worked for the Evans Company? A. I worked a couple of days; then I went back with the Brewery.

Q. Now, when did you work a couple of days for the Evans Company and then go back to the Brewery? Fix that time for us. A. Well, June—the 1st of July.

Q. Of 1937? A. Yes.

Q. How long did you work for Evans? A. I am working for Evans yet.

Q. When did you start with Evans? A. Well, after the summer—after the beer business dropped off. I just don't know the exact month.

5789

The Court: The summer of 1937?

The Witness: Yes, your Honor.

Q. Who was the manager for Evans when you first went to work for him? A. Walter A. Evans.

Q. Was there a man named Barber there at that time? A. Yes; Charles W. Barber.

Q. Will you tell us, were you working for Evans before Barber came to work for Evans? A. No; after.

Q. How long after?

Mr. Murray: If your Honor please, I object to the question.

The Court: Overruled.

5790 Mr. Murray: On the ground that it calls for a conclusion.

A. Probably about three or four months; probably five months after that. Mr. Barber was a solicitor.

Q. Were you driving a truck for the Lion Brewery? A. Yes, sir.

Q. When first did you get a license as a chauffeur in the State of New York? A. I judge about twenty-two years ago.

Q. Have you kept your license up at all times? A. Yes, sir.

Q. Up to the present? A. Yes, sir.

Q. When you talked to these Miner drivers did you know how far Norwalk, Connecticut, was from New York? A. I believe it is about fifty miles.

Q. And that was the point of origin of the Miner trucks, wasn't it, fifty miles out of New York? A. Yes.

Q. As a matter of fact, the exact distance from New York is forty-four miles, is it not? A. I wouldn't say.

Q. Well, did you make any inquiry to determine whether it was more or less than fifty miles out of New York?

5792

Mr. Murray: I object to it on the ground it is immaterial.

The Court: Overruled.

Mr. Murray: Exception.

A. Probably on a straight run it is forty-four miles, but a roundabout way it is probably fifty-four miles.

Q. Well, did you make any check to determine whether Norwalk was more or less than fifty miles out of New York City? A. I did not.

Q. By the way, did you talk to Miner before you had a talk with Horan which you described to us? A. I did not.

Q. So the first person you talked to about working for Miner was Horan, is that true?

5793

Mr. Murray: I object to the form of the question.

A. I did not.

The Court: Overruled.

Mr. Murray: Exception.

Q. You told us on direct examination that you knew a Reliable driver by name Jolly, is that true? A. I did, yes.

Q. Did you have a conversation with Jolly in Brooklyn in 1937? A. I did not.

Q. Did you have a conversation with Jolly at the firm of Berly & Amper? A. I don't know where they are.

Q. Did you ever have a conversation with Jolly about unloading Jolly's truck? A. I did not.

Q. When you had this conversation with Horan outside the Miner terminal, what was that conversation? A. About work.

Q. What was said? The one out on the sidewalk.

5795

Mr. Murray: I object, if your Honor please, on the ground that it has already been asked and answered.

The Court: Overruled.

Mr. Murray: Exception.

A. I spoke to him like I would speak to anybody else. I was out looking for work.

Q. Will you tell us what was said, please? A. Just that I shaped here and there, and that is all.

Q. When you told him you shaped here and there, tell us where were you shaping at that time. A. U. S. Trucking.

Q. Where else? A. That is all.

5796 Q. So that was the only place you told him about? A. Any place at all; wherever there was a barn big enough to employ men I would be there; if there was a possibility of getting on, I would get it.

Q. You are sure you didn't name any other place in your conversation with Horan than U. S. Trucking? A. That is all I know.

Q. Did you inquire of Horan whether you might get work through him? A. I did not.

Q. Can you recall anything else you said in that conversation? A. That is all.

Q. Were you ever on this driver's Jolly's truck? A. Was I ever on his truck?

Q. Yes. A. Why, I drove his truck, yes.

Q. Where did you drive Jolly's truck? A. From the office, right about town, Newark.

Q. Did you ever drive it into Brooklyn? A. Yes, sir—just a minute. I believe I went to the piers in Brooklyn with machinery.

Q. Did you ever meet Jolly for the first time on any given occasion in Brooklyn? A. I never met Jolly until I was hired there as a chauffeur. 5798

Mr. Cahill: I move to strike out the answer as not responsive.

The Court: I will allow it to stand.

Q. Did you ever meet Jolly for the first time on any occasion, on any trip in Brooklyn? A. Never.

The Court: Did you ever meet him in Brooklyn on any occasion?

The Witness: No, your Honor. The trucks was brought——

The Court: Just a minute. Strike out after "No." 5799

Q. Did you know a driver for the Reliable Motor Lines by the name of Shepard? A. I did not. I heard his name mentioned, but I never met him.

Q. When you asked for work at the Evans Motor Lines you say you talked to Mr. Evans? A. At the Evans Motor Line?

Q. Yes. A. The Evans Motor Line asked who would be the third man, and the shop steward says, "Deegan. Tell him to stand by; I got a truck coming over for him."

Q. Who was the shop steward who said Deegan? A. Al LaRose.

Q. Who in the Evans Motor Line, if you know, spoke to LaRose? A. Walter Evans.

Q. Who first spoke to you about the matter? A. Evans spoke to Louie.

Q. No; who first spoke to you? A. LaRose told me to stand by; there was a truck coming over.

Q. Was that the only conversation you had with LaRose? A. That is all.

Q. Can you fix the time of that conversation? A. Well, it was in the morning, but what day of the week——

5801 Q. I mean the time in relation to the month and year; not the time of day. A. I believe it was around 1937; the early part of 1937.

Q. What part of 1937? A. Well——

Q. When you say the early part, will you make it more precise? A. Well, if I didn't have nothing to do in the Reliable, only a couple of trucks came down, why, if I could catch on there for a day's work, I was there to get it.

Q. Isn't that what I asked you ten minutes ago, if it weren't the fact that you worked for Evans during the same time that you worked for the Reliable? Don't you recall my asking you that? A. Well, for steady work——

Q. I didn't ask you about steady work; I asked you was it not the fact that you worked for the Evans Company at the same time that you worked for the Reliable Company.

5802 Do you recall my asking you that? A. No, I don't.

Q. Well now, tell us what is the fact: Were you working for the Evans Company at the same time that you worked for the Reliable Company? A. Well, if there is a couple of days to get in the Reliable and I got it, O.K. If there was no trucks coming in and there was work some place else, I went to get that if I was eligible.

Q. Well, what is the fact? Did you or did you not? A. I suppose I could work on three jobs in one week if there was work.

Mr. Cahill: May I have the answer stricken out?

The Court: Strike it out.

Mr. Murray: I object on the ground the question has already been answered.

The Court: Overruled.

Mr. Murray: Exception.

Q. Will you please tell us what the fact is? Did you work for the Evans Company at the same time that you worked for the Reliable Company? A. Yes. 5804

The Court: But not on the same day?

The Witness: No; no, your Honor.

Mr. Cahill: I would like to come to that, if I may, your Honor.

Q. Tell us when first did you go to work for the Evans Company?

The Court: Well, I think we will take a recess now. It is a quarter to twelve.

Mr. Cahill: I will ask the witness not to speak to anybody, your Honor.

The Court: All right. Do not speak to anybody, Mr. Witness. 5805

(Short recess:)

(Last question read.)

Q. When first did you go to work for the Evans Company? A. Oh, probably June.

Q. In June of 1937? A. Yes.

Q. What time did you stop work for the Reliable Company? A. June.

Q. During this period of time when you were working for the Reliable, is there anybody else that you worked for? A. No.

Q. I thought you said a few minutes ago you were shaping around in a couple of other places at this time. Am I correct or incorrect in that? A. Wasn't that before I went to work for the Reliable?

Q. No. While you were working for the Reliable. A. No.

Q. You didn't say you were shaping around any other places while you were working there? A. No.

Q. Was Horan a No. 1 man at Reliable? A. Yes, sir.

5807 Shop steward.

Q. When did you first learn that he was? A. I just don't remember.

Q. Well, was it before you had a conversation with him on the sidewalk that you told us about? A. No.

Q. Was it during the conversation on the sidewalk that you learned that Horan was No. 1 man? A. Yes, sir.

Q. What was said about that? A. Nothing any more than he was shop steward.

Q. Did Horan tell you how he, Horan, had become the No. 1 man? A. He didn't say.

Q. And you didn't ask him? A. I didn't ask him.

Q. Now, did you ever frequent the Dickerson Terminal? A. What is that again?

Q. Did you frequent the Dickerson Terminal? A. Yes.

5808 Q. Here in New York City? A. Yes.

Q. Where is that located? A. Spring Street.

Q. Tell us the period of time that you frequented that terminal? A. About June.

Q. Of what year? A. 1937.

Q. The same time that we are speaking of with respect to Reliable and the Evans? A. With the Reliable Motor Lines.

Q. Now, did you ever work for anybody else who used the Dickerson Terminal? A. No, never.

Q. Did you ever have any conversation with Mr. Dickerson himself? A. Yes.

Q. Did you ever have any conversation with Mr. Dickerson about your loitering around that terminal?

Mr. Murray: I object, your Honor.

A. No.

The Court: Overruled.

Q. Did you ever have any conversation with Mr. Brenhan about your loitering around the Dickerson Terminal? 5810

Mr. Murray: I object to the question, if your Honor please.

The Court: Sustained.

Q. Will you tell me the names of all the Reliable Company drivers that you knew? A. Jolly, Stretch.

Q. Stretch? A. I heard Stretch's name mentioned.

Q. Is Stretch a first name or a last name, do you know? A. I guess that is a nickname.

Q. Isn't it a fact that Stretch is the nickname for a fellow named Shepard? A. I believe it is.

Q. You say you never met Stretch, is that a fact? A. I never met Stretch, no. 5811

Q. Now, what other Reliable drivers did you know? A. I think his name is Mike.

Q. Mike? What is the last name? A. Ego, Igo, or Ugo, or something like that.

Q. Tell us what other Reliable drivers you knew. A. That is all I knew.

Q. The only drivers you knew then were Mike and Jolly, is that right? A. Yes, sir.

Q. Were they the only two Reliable drivers whose trucks you worked on? A. Yes.

Q. How often did you see these men on an average during the week? A. I believe I seen Mike three times and Jolly several times.

Q. Did you ever have any discussion with Mike or Jolly about their being union men, too? A. They told me; I didn't ask them.

Q. Did they tell you that they were members of the same International of Teamsters as yourself? A. They did not.

Q. Didn't they tell you they were members of the Bridgeport local? A. They did not.

5813 Q. What did they tell you about being union men? A. They told me they were not union men. Jolly got his union button about June, and he didn't have——

Q. June when?

Mr. Murray: May I have the answer finished, if your Honor please?

The Court: Yes, you may.

The Witness: He had a union button on his hat and he came down and said he was going to the union, but he didn't have a book.

Q. Well, he had the button. That was Jolly. How about Mike? A. I never seen Mike with a union book or button.

5814 Q. Did you have any conversation with Mike on the subject? A. No.

Q. So you don't know whether or not Mike was a union man, is that right? A. I do not. Mike was a mechanic, and he used to drive extra when Jolly was all tired out; he would take the truck in New York, and that is how he came to get in New York, by being a relief driver.

Q. With whom did you discuss your rate of compensation at the Reliable Company? A. Miner.

Q. And when did you have that conversation? A. On the day that the checks came back.

Q. Is that the first conversation you had? A. Yes, sir.

Q. Didn't Horan tell you what his arrangement with Miner was? A. Horan told me nothing.

Q. Did Mitchell tell you that Horan and himself had a $50 a week arrangement with Miner? A. I never spoke to Mitchell in the Reliable place.

Q. Well, do you know that Horan and Mitchell had a $50 a week arrangement with Miner? A. I do not.

Q. When for the first time, if ever, did you learn of it? A. The other day in court.

Q. Did you ever have any conversation with Brennan? 5816
A. I did not.

Q. Do you know whom I refer to when I speak of Brennan? A. I don't know Brennan.

Q. You don't know anybody in 807 by the name of Brennan? A. Sam Brennan, yes.

Q. That is the Brennan I have in mind. A. Yes, sir.

Q. Now, did you have a conversation with Brennan at the Dickerson Terminal? A. I can't remember.

Q. Did you ever have a conversation with Hickey at the Dickerson Terminal? You know whom I refer to when I speak of Hickey? A. Yes.

Q. What is he? An officer of 807? A. He is.

Q. Did you ever have a conversation with Hickey? A. Yes.

Q. At the Dickerson Terminal? A. No. 5817

Mr. Cahill: That is all.

The Court: Any redirect?

Mr. Murray: That is all, Mr. Deegan, thank you.

(Witness excused.)

ANDY JAKAKAS, residing at 511 Park Place, Brooklyn, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Murray.

Q. Are you a married man? A. Yes, sir.

Q. Any children?

Mr. Cahill: Objected to as immaterial.

The Court: Sustained.

Q. Are you a member of Local 807? A. Yes, sir.

5819 Q. How long have you been a member of that union? A. Four years.

Q. Keep your voice up. Did you ever meet Carlton C. Hooks, president of the Hooks Motor Line, High Point, North Carolina? A. No, sir.

Q. Do you know the man? A. Only the other day when I saw him here.

Q. Now, on April 30th during this trial Mr. Hooks testified that he thinks during the first three months of 1937 at 516 West 25th Street that he saw you.

Mr. Ennis: I object to the form of the question.

The Court: Well, it is a satement made by counsel of the testimony in the case.

5820 Mr. Murray: Well, it is on the record, if your Honor please, and I am using it for the purpose of a categorical denial, but I can reframe the question.

The Court: There isn't any question yet. You have made a statement here as to what you contend the evidence is given by Hooks. That is all I have heard.

Q. Do you recollect that on the 30th of April during this trial Carlton C. Hooks stated that he thinks that during

the first three months in 1937 he saw you at 516 West 25th Street? Did you hear him testify to that? A. Yes, sir.

Q. Were you at 516 West 25th Street any time in 1937 when Mr. Hooks was there? A. I don't even know the man.

The Court: Well, did you ever see him at that place? That is the question.

The Witness: No.

Q. Did you ever work for Hooks? A. No, sir.

Q. Now, in 1937 were you employed by anybody? A. Yes, sir.

Q. Whom were you employed by? A. Cooper & Jarrett. 5822

Q. Cooper & Jarrett is it? A. Yes, sir.

Q. How long were you employed by that concern? A. Altogether?

Q. Yes. A. 4½ years.

Q. Do you recollect when you went to work for Cooper & Jarrett? A. I went to work on November 26, 1936.

Q. Are you still working for the same concern? A. Yes, sir.

Q. Is that a steady or a temporary job? A. Steady.

Q. What kind of merchandise did you truck? A. Butter and eggs.

Q. What time did you go to work in the morning? A. Six in the morning.

Q. When do you quit? A. Four.

5823

Mr. Murray: Your witness.

Cross-examination by Mr. Cahill.

Q. Now, during the period December 1, 1936, to June 1, 1938, tell us all the places of employment that you had, if there was more than one. A. Cooper & Jarrett.

Q. A little louder, please. A. Cooper & Jarrett.

Q. When did you start to work for Cooper & Jarrett? A. November 28, 1936.

Q. Did you work for them continuously up to and including June 1, 1938? A. Yes, sir.

Q. Did you during that period of time work for anybody else? A. No, sir.

Q. Did you ever do any work for the Benjamin's Express? A. No, sir.

Q. Beg pardon? A. No, sir.

Q. Do you know anybody connected with the Benjamin's Express? A. No, sir.

Q. Is this the first time you ever heard of the Benjamin's
5825 Express? A. Well, I seen the trucks on West Street.

Q. Do you know one Samuel Gerson? A. No, sir.

Q. Never met Mr. Gerson? A. No, sir.

Q. Never heard of him before? A. No, sir.

Q. Do you know Michael Cahill? A. You mean the man that sits down there (indicating)?

Q. Yes. A. The first time I ever met him, when we came here together.

Q. You never saw him before? A. No, sir.

Q. Have you attended Local 807 meetings? A. Yes, sir.

Q. Have you never seen Michael Cahill at any local meetings? A. No, sir.

Q. Have you ever worked with any of these defendants who are on trial? A. No, sir.

Q. At any time? A. Not at any time.

5826 Q. Now, in working for Cooper & Jarrett were you the No. 1 man on the job? A. Yes, sir.

Q. Where did the Cooper & Jarrett trucks come from? A. Kansas City, Missouri.

Q. Was there anybody else who had been the No. 1 man for Cooper & Jarrett before you? A. What is that? I don't hear that.

The Court: The stenographer will repeat the question.

Q. (Read) A. I don't remember.

Q. I beg your pardon? A. I don't remember.

Q. You were the first man to be the No. 1 man? A. That is right.

The Court: Can the 14th juror hear this witness?

Juror No. 14: With difficulty.

The Court: You will have to speak louder.

The Witness: Yes, sir.

The Court: It won't do you any good to tell your story if the jury doesn't hear it.

5828

Q. Now may I have again the date you first went to work for Cooper & Jarrett? A. November 28, 1936.

Q. On November 28, 1936, the date you first went to work for that company, how long had you been a member of Local 807? A. Oh, about a year and a half.

Q. Well, give us the date you joined Local 807. A. I don't remember.

Q. Have you got your Local 807 book with you? A. Yes, sir.

Q. Will you take it out and look at it? A. (Witness looks at book.) Do you want me to read it out?

Q. No. You look at it. Now can you tell us, having looked at it, when for the first time you became a member of Local 807? A. February 26, 1936.

5829

Q. A little louder. We can't hear you. A. February 26, 1936.

Q. That is the first time you joined Local 807? A. Yes.

Q. February, 1936? A. Yes.

Q. Now, how did you become No. 1 man for the Cooper-Jarrett Company in November of that same year?

Mr. Maguire: That is objected to, if the Court please.

The Court: What ground?

Mr. Maguire: It calls for a conclusion.

The Court: Overruled. It is cross-examination.

Mr. Maguire: Exception.

A. How?

Q. Yes. Tell us the circumstances under which you became the No. 1 man for the Cooper, Jarrett Company. A. Well, they hired me.

Q. Well, whom did you talk with first about going to work for the Cooper, Jarrett Company? A. I didn't talk to anyone.

Q. Well, were you hired without talking to anyone?

5831

The Court: Who hired you?

The Witness: Mr. Cooper.

The Court: Well, did you have any conversation with him when he hired you?

The Witness: No, sir. He came up to 13th Street and wanted a driver on the trailer. So he asked me if I could handle a trailer, and I told him, "Yes, sir," and he took me down there and give me the trailer to go down to the pier.

The Court: You went down to the pier?

The Witness: Yes. Right after that he employed me.

5832 *By the Court.*

Q. When with respect to that did you become the No. 1 man? A. Then.

Q. Were you the No. 1 man when you first got on that truck and went down to the pier? A. Yes, sir.

Q. Without any conversation? A. Yes, sir.

Q. Nobody told you you were the No. 1 man? A. No.

Q. Were you the only man employed by Cooper, Jarrett? A. That is right.

Mr. Cahill: May we have the complete answer read?

(The questions beginning with: "Did you have any conversation with him when he hired you?" down to the last answer of the witness read by the stenographer.)

By Mr. Cahill.

Q. Now, you were the first 807 man employed by Cooper, Jarrett Company, isn't that true? A. Yes, sir.

Q. After you first went to work for Cooper, Jarrett were there other 807 men employed? A. After that, yes.

5834

Q. How many? A. One.

Q. When was he employed? A. Where?

Q. When. A. When?

Q. Yes. A. Oh, about a week after.

Q. What was that man's name? A. His name is Eddie Collins.

Q. Now, in addition to Collins and yourself did any 807 men work on the Cooper, Jarrett trucks? A. Yes, sir.

Q. Who else? A. Oh, plenty of others; I can't——

Q. Well, how many? A. Oh, about four or five.

Q. In addition to Collins and yourself? A. Yes, sir.

Q. Will you tell us the highest number that worked on the Cooper, Jarrett trucks from November 21, 1936, to June 1, 1938?

5835

The Court: At one time?

Mr. Cahill: At one time, yes, your Honor. A. Seven men.

Q. Seven men were working? A. Yes.

Q. Now, did you have any conversation with any employes of the Cooper, Jarrett Company before you met Mr. Cooper? A. No, sir.

Q. How did you come to meet Mr. Cooper? Was it pursuant to an appointment with Mr. Cooper? A. I didn't meet him. He met me.

Q. Where did he find you? Give us the address and the place. A. 13th and Hudson Street.

Q. Was it on the street corner? A. Yes, sir. A gasoline station.

Q. What is the name of the gasoline station? A. I couldn't tell you.

Q. Had you told Mr. Cooper you would be at this gas station? A. No, sir.

Q. Did Mr. Cooper just walk up to you? A. No. He
5837 walked up to 13th Street and wanted a driver to handle a trailer. That is what he wanted.

Q. Well, did he just speak to you without knowing who you were? A. He wanted a driver to handle the trailer.

Q. Will you just answer the question, please? Did he speak to you without knowing who you were? A. That is right.

Q. Had you never seen a Cooper, Jarrett truck before? A. No, sir.

Q. Had you never stopped Cooper, Jarrett trucks before you talked to this gentleman? A. No, sir.

Q. Did this gentleman talk to you about your being a member of 807 at that time? A. No, sir.

Q. Did you tell him at that time that you were a member of 807? A. No, sir.

5838 Q. Did you thereafter accompany this gentleman to the union headquarters? A. What was that?

Q. Did you thereafter go with this gentleman to the 807 headquarters? A. Yes, sir.

Q. When did you go, with relation to your first conversation? A. About a week later.

Q. And whom did you see there? A. Where?

Q. At the 807 headquarters. A. Mr. Larkin.

Q. Now, did you have a conversation with Mr. Cooper? A. When?

Q. About going to the 807 headquarters. A. No, sir.

Q. Well, who suggested going to the 807 headquarters? A. Well, he hired me and it was supposed to be $9.42, and when I worked for him he wanted to give me $5. So I told him I was a union man; I wanted $9.42.

Q. Did you go with him to the union headquarters to sign a contract? A. Yes, sir.

Q. Whom did you see there? A. What?

Q. Whom did you see there? A. Mr. Walter Larkin.

Q. Now, did there come a time in 1937 when merchandise was stolen from the Cooper, Jarrett trucks? 5840

Mr. Murray: I object to the question, if your Honor please.

The Court: Sustained.

Mr. Cahill: May I approach the bench, your Honor?

The Court: No. I sustain the objection.

Mr. Cahill: Well, I didn't want to pursue the line.

The Court: You may pursue the line, but I sustain the objection to the form of that question.

Mr. Cahill: All right, your Honor.

The Court: You are asking this witness to try some other lawsuit in the form in which that question was asked. 5841

Mr. Cahill: It was merely preliminary.

The Court: All right. It was objected to, and I considered that the objection was proper.

Q. Did there come a time when you were in the Charles Street Police Station?

Mr. Murray: Now I object, if your Honor please, on the ground that that is highly improper.

The Court: I don't see anything improper in that. I have been in lots of police stations.

Mr. Murray: I know, but there is an implication.

The Court: No, there is no implication at all. He may answer the question yes or no.

Mr. Murray: I except.

The Court: Lots of people go to police stations to make complaints.

A. Yes.

The Court: And to get information.

5843 Q. Will you fix the date of this occasion for us?

Mr. Murray: I object.

The Court: Overruled.

Mr. Murray: Exception.

A. I don't remember what time it was.

Q. Well, what year was it? A. 1937. I think it was 1937.

Q. In the spring of 1937 was it? A. I guess so.

Q. Who was there?

Mr. Murray: I object to that, if your Honor please.

5844 The Court: Overruled.

Mr. Murray: Exception.

The Court: He may state if he knows.

A. Who was there?

Q. Yes. A. Two detectives.

Q. And who else, if anybody? A. Frank Cooper.

Q. Did you have a conversation in the Charles Street Police Station in the spring of 1937 with the two detectives and with Mr. Cooper?

The Court: Yes or no.

A. Yes, sir.

Q. Will you tell us what that conversation was?

Mr. Boudin: That is objected to.

The Court: I will hear counsel now.

Mr. Cahill: All right, Judge.

(Conference at the bench between Court, Mr. Cahill and Mr. Ennis without the hearing of the jury.)

(Last question read.)

The Court: I will sustain the objection to the form of the question. You may ask this witness what he said on that occasion. 5846

Mr. Cahill: All right. I withdraw the question.

Mr. Boudin: Will your Honor hear us on that point? I think this is objectionable on the ground that it is not proper cross-examination. There was nothing on direct that was brought out.

The Court: I will overrule that objection. He has a right to confront this witness with a circumstance that happened at some time, if the witness doesn't tell him what occurred there, or if he has witnesses who can testify to something different from the version of the witness, that all goes to the credibility of the witness, not on the question of whether the witness was in an alleged conspiracy here as set forth in the indictment. 5847

Mr. Boudin: But if your Honor please, they have made him their own witness as to that, and I think——

The Court: Well, I am not ruling on that. It is a question of how far they go to make him their own witness.

Mr. Boudin: We respectfully except.

The Court: All right.

Q. What did you say on that occasion, Mr. Jakakas? A. Say what?

Q. In the police station at the time you were there with the two detectives and Mr. Cooper?

The Court: Do you remember what you said?
The Witness: I didn't say anything.
The Court: You didn't say anything?
The Witness: No, sir.

Q. How long were you in the police station? A. Two hours.

Q. And during that time you didn't say a word? Is that
5849 your testimony? A. Oh, they asked me a few questions.

Q. Well, what did you say?

Mr. Murray: I object, if your Honor please. I press my objection.
The Court: Overruled.
Mr. Murray: Exception.

A. They asked me if I stole twenty tubs of butter with this other man, and I told them "No."

Q. Go ahead. Anything else that you said? A. And one of them wanted me to sign some kind of a paper. That is all.

Q. Now you can't recall anything else that was said?
5850 A. No, sir.

Q. Where had those tubs been taken from, do you recall?

Mr. Murray: I object, if your Honor please, to the form of the question.
The Court: Sustained.

Q. Do you recall whether anything was said as to where those tubs of butter were taken from?

Mr. Murray: I object.
The Court: Overruled.
Mr. Murray: Exception.
The Court: Yes or no.

A. No, sir.

The Court: Had you had some tubs of butter on the truck you were driving?
The Witness: I had plenty of butter.

Q. Were these boxes of butter a part of a load on a truck you had been driving?

5852

Mr. Murray: I object to the form of the question, if your Honor please.
The Court: I will allow that.
Yes or no.
Mr. Murray: Exception.

A. What boxes?
Q. The boxes that the conversation was about in the police station.

The Court: Well, I will exclude that question. There isn't anything before me except your statement that that was the conversation in the police station.

Mr. Cahill: If I understood the witness, he said 5853
there was a conversation about twenty tubs of butter in the police station.
The Court: You just asked him about boxes of butter.
Mr. Cahill: I beg your pardon. I will amend it and make it tubs of butter.

Q. Were the twenty tubs of butter that you conversed about in the police station part of a load on a truck that you had been driving? A. I wasn't driving that truck at the time.

Q. Who was driving it? A. The road driver.

Q. Where was the truck at the time? A. Where was the truck?

Q. Yes.

Mr. Murray: At what time?

Q. At the time of the alleged disappearance of the tubs of butter.

5855

Mr. Murray: Now I object.

The Court: I will sustain the objection.

By the Court.

Q. Where had you taken the butter on this truck, if you know? A. I took the whole load to Mineola, Long Island.

Q. Is that where the butter was loaded? A. That is where it was unloaded.

Q. Unloaded? A. Yes.

Q. Where did you get on the truck? A. I got on the truck down at 136 Jane Street.

Q. Was the truck loaded? A. Yes.

5856 Q. And did it come into New York from some other place? A. That is right.

Q. And you took the place of the road driver? A. Yes. He was with me. He was driving the truck at the time.

Q. But when you got on the truck who drove it after that? A. He did.

Q. He did? A. Yes, sir.

Q. And you drove it out to Mineola? A. Yes, sir.

Q. At Mineola what, if anything, was done with the contents of the truck? A. I unloaded the truck in Mineola.

Q. Now, after you unloaded the truck in Mineola did you go to the Charles Street Police Station? A. Yes, sir.

Q. Sometime after that? A. Yes, sir.

Q. And that is where you had this conversation? A. That is right.

The Court: All right.

By Mr. Cahill.

Q. Now, do I understand you to say that on this occasion the over-the-road driver had driven the truck from Mineola? Is that the fact? A. Yes.

Q. Well, where did you get on the truck? A. 136 Jane 5858
Street.

Q. Was it customary for the over-the-road driver to drive the truck after you got on? A. No. He wanted to come with the truck that day.

Q. Did you usually drive the truck yourself? A. Yes, sir.

Q. And where was the over-the-road driver usually while you were driving it? A. Sitting alongside of me.

Q. What was this over-the-road driver's name? A. I couldn't tell you.

Q. What is your best recollection as to his name? A. I don't know.

Q. Can't you even give us his first name? A. No, sir.

Q. Can you describe him? A. I only saw the man two 5859
or three times.

Q. Well, give us the best description you can of him. A. Well, he looks something like you.

Q. Anything apart from that? A. No, sir.

Q. You can't tell us how often you saw him even? A. I saw him about two or three times.

Q. How old a man was he? A. He was around 27 or 28 years old.

Q. Was this the first time you had seen him? A. I saw him three times. That was the third time I seen him.

Q. Did you have a conversation with him? A. No, sir.

Q. Was he in the police station with you on this occasion? A. That is right.

Q. Now, as the No. 1 man on this Cooper, Jarrett job, did you ever call any strike? A. No, sir.

Q. You never called any strike at any time while you were employed there? A. No, sir.

Q. Did you have any conversation ever with Mr. Cooper about unloading trucks in Jersey? A. No, sir.

Q. Did you ever unload any trucks in Jersey? A. Yes, sir.

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Q. And whose trucks were they? A. Cooper & Jarrett's.

Q. By the way, when did you become a chauffeur? A. 1926.

Q. And when for the first time did you drive a trailer? A. 1931.

Q. What had you been doing between February, 1936, and November, 1936? A. Driving a truck.

Q. And for whom? A. Syracuse Freight.

Q. Syracuse Freight? A. Yes.

Q. Here in New York City? A. Yes, sir.

Q. Were you the No. 1 man on that job? A. No, sir.

Q. What were you on that job? A. I couldn't tell you what I was there. I was working there. That is all I know.

Q. Who worked with you on the Syracuse Freight job?

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A. A few other fellows.

Q. Name them. A. Frank Celecia. Louis Schwartz. That is about all I can remember.

Q. Did Campbell work on that job? A. Yes, he did work there before he was made delegate, yes.

Q. When did he work on the job? A. 1935.

Q. And did he work there in 1936? A. I can't remember.

Q. Did he work there right up to the time he became a delegate? A. I don't know. I left the job before that.

Q. When did you leave it? A. I don't know when I left the job, but I know I left the job before that.

Q. Well, what is your best recollection as to when you left the Syracuse Freight? A. I can't remember.

Q. Well, was it in November, 1936? A. I don't remember.

Q. Well, let us take it from the other end: When did you start working for the Syracuse Freight? A. I imagine in 1935.

Q. And was Campbell there at that time? A. I don't remember if he was there or not.

Q. Well, when did you come there? A. I don't know.

Q. He was there before you left, though? A. Yes. He 5864
was there before I left.

Q. How long before you left was he there? A. I don't remember.

Q. Now, you worked at the Syracuse Freight since 1935 up to some time in 1936 that you can't tell us, is that right? A. Yes, sir.

Q. When in 1935 did you begin there? A. I don't remember.

Q. Well, was it in the hot weather or the cold weather? A. It was in the summer time, yes.

Q. In the summer time? A. Yes.

Q. 1935? A. Yes.

Q. Was it as early as June, 1935? A. Maybe.

Q. And you were not a member of Local 807 when you 5865
went to work at the Syracuse Freight Forwarding, is that right? A. I was a member.

Q. I thought you told us a little while ago you didn't join Local 807 until November, 1936? A. No: February, 1936.

Q. I stand corrected. February, 1936? A. Well, that is the time I worked for the Syracuse Freight Forwarding.

Q. I understand you to say you went to work for the Syracuse Freight Forwarding in the summer of 1935? A. They didn't use no union men at that time.

Q. Well, were you or were you not a member of Local 807 when you went to work for the Syracuse Company? A. I was.

Q. When did you become a member of 807?

Mr. Murray: I object to the question as already answered.

The Court: Overruled.

A. What was that?

Q. When did you become a member of Local 807? A. February 26, 1936.

Q. February 26, 1936? A. Yes, sir.

5867 Q. Now, when did you go to work for the Syracuse Company? A. It was around that time, I guess.

Q. February, 1936? A. Yes, sir.

Q. You were in error when you said you went to work for them in June, 1935? A. What is that?

Q. You were in error when you said you went to work for the Syracuse Company in June, 1935? A. Well, I don't remember, but I was an extra man in there. I would get a day or two days a week.

Q. When did you go to work for them? A. I can't remember when it was.

Q. Was it prior to February, 1936? A. I don't remember.

Q. Well, just try and recall, if you can. Was it prior to February, 1936? A. It was around that time, 1936,

5868 yes, sir.

Q. Was it before February, 1936? That is my question. A. No, it can't be before because I had my book when I went to work for the Syracuse Freight.

Q. Is it your testimony now that you didn't go to work for the Syracuse Company until February, 1936? A. No.

Mr. Murray: I object to pursuing this line any further.

The Court: Overruled.
Mr. Murray: Exception.
The Witness: No. I worked before that.

Q. When did you go to work for the Syracuse Company? A. I can't remember. I was only getting a couple of days a week.

Q. What is your best recollection as to when you started working for the Syracuse Company?

Mr. Murray: I object to it on the ground that it is immaterial.
The Court: Overruled.
Mr. Murray: Exception. 5870

A. I can't give you the date, if that is what you are looking for.

Q. Give me your best approximation of it. A. I don't remember.

Q. What year was it? A. 1936.

By the Court.

Q. How long did you work for the Syracuse Company altogether? A. On and off about six or seven months, about a day a week.

Q. You went to work for Cooper & Jarrett, you said, in November, 1936. Do you remember how long it was after you left the Syracuse Freight Company before you went to work for Cooper & Jarrett? A. Oh, a couple of weeks. 5871

Q. Then you worked for Cooper & Jarrett up to some time in October or November of 1936? A. Yes.

Q. And you had been working for the Syracuse Freight Company for how long before that altogether? A. Altogether about six or seven months.

By Mr. Cahill:

Q. Well, when did you leave the Syracuse Company? A. There was no work.

Q. When did you leave? I want the date, please. A. When I went to work for Cooper & Jarrett.

Q. Did you quit the Syracuse Company before you met Cooper or after you met Cooper? A. Before.

Q. How long before? A. A couple of weeks.

Q. Were you doing nothing when you met Cooper? A. Yes, sir.

Q. Now, what was the date you say you met Cooper? A. It was November.

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Q. What time in November? A. What date you mean?

Q. Yes. What date in November? A. Around the 28th or 29th.

Q. Around the 28th or 29th? Now, how long was it after you first met Cooper that you went down to the union hall with him? A. How long?

Q. Yes. A. A couple of weeks. A week or two, I guess.

Mr. Cahill: May I have this marked for identification.

(Marked Government's Exhibit 70 for Identification.)

Q. I show you Government's Exhibit 70 for Identifi-
5874 cation and ask you if you have ever seen that before. A. I never seen that part (indicating) before.

Q. Were you there when anything was done with regard to this paper? A. Yes.

Q. Where did you see this paper before? A. Down at Local 807.

Q. On what occasion? A. The day that Mr. Cooper wanted to sign the contract.

Q. Did you see this paper signed? A. Yes, sir.

Mr. Cahill: I offer it in evidence.

The Court: Show it to counsel.

(Mr. Cahill hands paper to defense counsel.)

Mr. Murray: I object, if your Honor please, on the ground that it does not come within the issues of this indictment and on the ground that it does not impeach or contradict this witness' testimony and on the further ground that it is outside all of the issues in this indictment.

The Court: Let me see it.

(Paper handed to the Court.)

The Court: Well, I can't see that it is in any way prejudicial so far as the matter of the issue is concerned. 5876

Mr. Murray: I further urge, if your Honor please, that it is immaterial and irrelevant.

The Court: Well, I am going to receive it in view of the date.

Mr. Cahill: For that purpose it is offered.

The Court: And only for that purpose; so it may be considered by the jury in connection with the testimony of this witness as to when he went with Mr. Cooper to the place where this paper was signed.

Mr. Murray: I respectfully except, if your Honor please.

(Government's Exhibit 70 for Identification received in evidence.) 5877

Mr. Cahill: Ladies and gentlemen, this paper bears date November 27, 1936.

Q. Now, when you had this conversation with Mr. Cooper at this gas station were there any Cooper, Jarrett trucks around? A. No.

Q. Did you go to work that same day? A. Yes, I did.

Q. Did you go to work on one of Mr. Cooper's trucks? A. Yes, sir.

Q. Where was the truck you went to work on? A. Down on Jane Street.

Q. You went down to Jane Street with Mr. Cooper? A. Yes, sir.

Q. Was there any driver on that truck? A. The road driver, yes.

Q. What did you do? A. I didn't do anything. He told me to get on the truck and drive it.

Q. What did the road driver do? A. He was sick. He was sleeping.

5879 Q. What time of day was it? A. It was around 8.30 in the morning.

Q. Where did the road driver go? A. He went to sleep on the truck.

Q. He stayed with you on the truck, did he? A. Well, they got beds in there. They got a bunk.

Q. He rode along on the truck? A. Yes.

Q. Did you ever make any telephone calls in regard to Cooper, Jarrett trucks before this time?

Mr. Boudin: That is objected to.

The Court: He may answer yes or no.

A. No, sir.

Q. You never called anybody up about them? A. No,

5880 sir.

Q. Had you ever talked to any drivers of the Cooper, Jarrett Company prior to this time?

The Court: When you say "this time," do you mean the time that he first went to work for Cooper, Jarrett?

Mr. Cahill: The day that he first met Cooper, which is the day he went to work.

The Court: Do you understand the question?

The Witness: No, sir, I don't understand that, your Honor.

The Court: The stenographer will repeat the question.

Q. (Read) A. No, sir.

Q. Now during the period that we have covered, December 1, 1936 to June 1, 1938, did you receive any money whatsoever?

Mr. Murray: I object to the form of the question as not accurate.

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Mr. Cahill: December, 1936, to June 1, 1938.

Mr. Murray: I think you fixed the time as November 27th, didn't you?

Mr. Cahill: I intended to say December 1.

The Court: Let us hear what the reporter has.

(Last question read.)

Q. During the period from December 1, 1936, to June 1, 1938, did you receive any money whatsoever from any truckers other than the Syracuse or Cooper & Jarrett?

Mr. Murray: I object to it on the ground that it is immaterial and irrelevant.

The Court: Overruled.

Mr. Murray: Exception.

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A. Any time I was given any money was when I worked for it.

Q. That is not my question.

The Court: Did any truckman——

The Witness: No, sir.

The Court: —pay you any money other than the Syracuse Freight and Cooper & Jarrett between the 1st of December of 1936 and the 1st of June, 1938?

The Witness: No, sir.

Q. Well, did you work for anybody else at any time during the period from December 1, 1936, to June 1, 1938? A. No, sir.

Q. For anybody except Syracuse or Cooper & Jarrett? A. Cooper & Jarrett.

Q. Beg pardon? A. Cooper & Jarrett.

Q. Did you undertake to adjust disputes in any other place during that period?

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Mr. Boudin: That is objected to, if your Honor please.

The Court: Sustained.

Q. Where was this office of the Benjamin's Express Company? A. I don't know.

Q. Isn't it a fact that it was just around the corner from the terminal used by Cooper, Jarrett? A. Maybe it was. I never seen it.

Q. You never walked around the block from the Cooper, Jarrett place? A. No, sir.

Q. You have never been in the Benjamin's Express office? A. No.

5886 Q. Beg pardon? A. I had no business there.

Q. No. The question is have you been there? A. No.

Q. When did you leave the Cooper, Jarrett Company? A. I am still working for them.

Q. Where are you working for them? A. Hoboken.

Q. In Hoboken, New Jersey? A. Yes, sir.

Q. Does the Cooper, Jarrett Company have an office in New York any more? A. No, sir.

Q. When did the Cooper, Jarrett Company give up the New York office? A. 1938.

Q. After this occurrence in the Charles Street Police Station did you continue your work immediately with the Cooper, Jarrett Company? A. Yes, sir.

Q. Did you go back to work the very next day? A. No, sir. The day after.

Q. The day afterwards? A. Yes.

Q. What did you do on the day after this conversation in the Charles Street Police Station?

Mr. Boudin: That is objected to.

The Court: Overruled. 5888

Mr. Boudin: Exception.

A. I didn't do anything.

Q. Did you talk to anybody about it? A. No, sir.

Q. When do you say you resumed your work for the Cooper, Jarrett Company?

Mr. Murray: I object to it on the ground it is already answered.

The Court: Yes. Sustained. He has already answered that.

Q. Did you have any conversation with anybody at that time? A. No.

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Mr. Murray: I object to it on the ground that it is already answered.

The Court: Overruled. He says no.

Q. Do you know whether or not the 807 men continued to work on the day following your appearance in the Charles Street Police Station?

Mr. Murray: Objected to on the ground that it is immaterial and irrelevant.

The Court: Well, I will sustain it as to the form, and in the meantime we will take a recess until 2.05.

The witness will not talk to anyone during the recess.

(Recess to 2.05 P. M.)

AFTERNOON SESSION, 2.05 P. M.

5891 ANDY JAKAKAS, resumed the stand and further testified as follows:

Cross-examination (continued) by Mr. Cahill.

Q. Well, referring back to the day after your visit to the police station, did you have any conversation with Austin Furey on that day? A. No, sir.

Q. Did you have any conversation with Willie Campbell? A. No, sir.

Q. Did you have any conversation with any officer or delegate of Local 807? A. No, sir.

Q. Did you have any conversation with any of the other 807 men who were working on the Cooper job? A. No, sir.

5892 Q. Did you go near the Cooper place of business on that day? A. No, sir.

Q. Do you know whether the other 807 men on the Cooper job were working on that day? A. I don't know.

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled. You may answer yes or no.

A. I don't know.

Q. Did you have any conversation with anybody about not going to work on that day? A. No, sir.

Mr. Boudin: That is objected to as to form.
The Court: The same ruling.
Mr. Boudin: Exception.

Q. You just didn't show up for work, is that true? A. That is correct, yes, sir.

Q. Did you have any conversation with anybody about going back to work the next day? A. No, sir.

Q. You just showed up for work? A. That is right.

Q. Did you have any conversation with Mr. Cooper on the second day when you showed up for work? A. No. 5894

Q. Did anybody ask you where you had been the day before?

Mr. Murray: I object to that on the ground it is immaterial and irrelevant.
The Court: Sustained.

Q. Did you get paid for the day you were away? A. No, sir.

Q. Did you ask for pay on that day? A. No, sir.

Q. Did you have any strikes on the Cooper job while you were there? A. No, sir.

Q. No strikes from the time you started until the time you finished? A. No, sir. 5895

Q. Is your recollection refreshed as to when you started working for the Syracuse Company? A. I was working a few months before I started working on the Cooper job.

Q. Just a few weeks? A. A few months.

Q. What is your best recollection now as to when you first started working for the Syracuse Company? A. I can't remember that.

Q. Well, can you place it as to the time of the year? A. 1936, I know it was.

Q. In 1936? A. Yes, sir.

Q. What time in 1936? A. The winter or the summer. In the summer.

Q. Who was the delegate in charge of the Cooper job? What delegate of 807?

Mr. Murray: I object to the form of the question as a conclusion.

The Court: Sustained.

Q. Well, was there a delegate who had supervision over the Cooper job? A. Yes, sir.

Q. Now, what delegate was that? A. Thomas Kehoe.

5897 Q. Well, did you talk to Thomas Kehoe the day after you visited the Charles Street police station?

Mr. Murray: I object to that on the ground he has already answered.

The Court: Overruled.

Mr. Murray: Exception.

A. No, sir.

Q. Isn't it a fact that Kehoe ceased to be the delegate in December, 1936? A. No.

Q. Well, when did Kehoe cease to be an 807 delegate? A. When?

Q. Yes. A. December 13, 1937, got out of the office.

5898 Q. In 1937? A. I think so; I am not sure.

Q. In December of 1937? A. Yes.

Q. Well, when did Campbell and Furey become delegates of 807? A. Around that time.

Q. Immediately thereafter? A. Yes, I think so.

Q. Well, now, while Kehoe was delegate, did you talk to him at all about your work with the Cooper Company? A. No.

Q. Never talked to him? A. No, except to say hello to him.

Q. Do you remember a certain election in the union in December, 1936? A. Yes.

Q. Wasn't it at that time that Campbell and Furey were elected delegates? A. I guess so.

Q. Wasn't it at that time too that Kehoe went out as the delegate? A. I think so. It was around that time.

Q. Well, now, that was before this incident at the Charles Street police station, isn't that true? A. Yes.

Q. So that Campbell and Furey were the delegates at the time of this Charles Street police station incident, isn't that true? A. I think so.

Q. Which of those two, Campbell and Furey, was the delegate who had supervision over the Cooper job at the 5900 time of the Charles Street police station incident?

Mr Murray: I object to the question as calling for a conclusion.

The Court: Overruled.

Mr. Murray: Exception.

A. I couldn't tell you. I don't know.

Q. Well, what delegates of 807 had supervision over the west side of Manhattan? A. I think Kehoe was there.

Q. After Kehoe? A. I don't know.

Q. Well, did you even see an 807 delegate after Kehoe went out in December, 1936? A. I never had no trouble to see any delegate.

Q. Will you just answer my question: Did you ever see 5901 a west side delegate after Kehoe went out in December, 1936? A. I seen the delegates in the meetings we had.

Q. Did you ever see either Campbell or Furey in connection with the Cooper job? A. No, sir.

Q. Never had any conversation with either of them about it? A. I don't remember.

Q. I am speaking from the time now January 1, 1937, through June 1, 1938. Did you ever have any conversation

with either Campbell or Furey about the Cooper job? A. No, sir, I don't remember.

Mr. Cahill: Nothing further.

Re-direct examination by Mr. Murray.

Q. What kind of a truck was it that you were driving the day that you went to the Charles Street station? A. A trailer.

Q. How many tons? A. 10-ton.

Q. How large a trailer? A. 36 foot long.

Q. Was it an open or covered truck? A. It was a re-
5903 frigerator.

Q. Do you mean that it was covered in? A. Yes, sir.

Q. Did it have doors on it? A. Yes, sir.

Q. Do you know whether or not the doors on that refrigerating truck were locked or unlocked? A. There was a seal on it.

Q. A what? A. A seal on it.

Q. Was there a lock on the doors? A. Yes, sir.

Q. Who carried the key to the lock on the doors? A. The road driver.

Q. Did you ever have the key to the lock on the doors? A. We ain't supposed to have it.

The Court: No. Strike out the answer. He
5904 asked you if you ever had it.

The Witness: No, sir.

Q. How many trucks did this concern that you worked for employ? I mean coming into New York for deliveries. A. Every day?

Q. Yes. A. Oh, they had anywhere from ten to twenty-five a day.

Q. A day? A. Yes, sir.

Q. Were they all trailers? A. Yes, sir.

Q. The same size of truck as you described that you rked on? A. Yes, sir.

Q. Now, Mr. Cahill asked you whether or not you had t the defendant Cahill at any of the meetings at 807. you recollect that? A. I never seen a man——

Q. Do you recollect Mr. Cahill asked you before lunch hether or not you had met the defendant Cahill? A. es, sir.

Q. Do you know how many members belonged to Local 7? A. As far as I know it is 16,000.

Q. Do you know how many members ordinarily went to eetings at the union? A. Anywhere from a thousand to out 5,000. 5906

Q. And would it be possibye for Cahill to be there with- t you seeing him? A. Yes.

Mr. Ennis: Objected to as a conclusion.

The Court: Sustained.

Anything further?

Mr. Cahill: Nothing further.

The Court: Witness excused. Next witness.

Mr. Murray: If your Honor please, I move to strike out all questions and answers relative to the incident in the Charles Street police station, on the ground that it in nowise affected or impeached the credibility of this witness, on the ground that it is outside of the issues in this indictment, and further on the ground that it was highly prejudicial with 5907 the implications that were sought to be drawn from it.

The Court: Denied.

Mr. Murray: I except.

I ask your Honor now to instruct the jury to disregard the questions and answers concerning the Charles Street police station incident.

The Court: I won't do that at this time.

5908 *Andy Jakakas—For Defendants—Redirect.*

Mr. Murray: I respectfully except.

By reason of the questions elicited concerning the Charles Street police station incident, I now move for the withdrawal of a juror on the ground that it is prejudicial and calculated to be inflammatory against the defendant.

The Court: Denied.

Mr. Murray: Exception.

The Court: Next witness.

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